
(2010) 03 OHC CK 0042
In the Orissa High Court

Debendra Swain and Others

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 18-03-2010

Acts Referred:

Constitution of India, 1950 — Article 227

Citation : (2010) 110 CLT 21

Hon'ble Judges : Sanju Panda, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Sanju Panda, J.—Challenge has been made in this Writ Petition to the Order Dated 30.10.2008 passed by the Learned Civil Judge (Junior Division), Nimapara in C.S. No. 157 of 2007 allowing the application filed by the present Opp. Parties 2 to 6 under Order 1 Rule 10 of the CPC to implead them as Defendants in the suit.

2. Before proceeding with the contentions raised by the parties which are pleaded in the record, the following facts of the case are to be stated:

The Petitioners as Plaintiffs filed the aforesaid suit for declaration of their occupancy right over the suit land, alternatively declaration of title by way of adverse possession, permanent injunction along with other reliefs. They further pleaded that the disputed land was the ex-intermediary estate of late Raybahadur Lokanath Mishra of Markendeswar Sahi, Puri. The suit land was fallow & non-productive land & its status was Anabadi. One Shayam Swain who was a settled rayati of village Bamera approached the ex-landlord to grant him lease in respect of the suit land under Sabik Khata No 105. The ex-landlord granted him lease in respect of Ac.1.20 decs. in Sabik Plot No. 423 & Ac.1.50 decs. in Sabik Plot No. 54 under Sabik Khata No. 105 of Mouza-Bamera for agricultural purposes. Accordingly, on receipt of due Salami lease was granted in respect of the said land on 15.8.1943. The said Shayam Swain is the

predecessor-in-interest of the Plaintiffs & he converted the Anabadi land to agricultural land & continued his possession & cultivated the same till his death. After his death, his successors-in-interest including the Plaintiffs cultivated the land openly to the knowledge of all & acquired occupancy right over the same. During Hal Settlement Operation, the land was illegally recorded in the name of the State with a note of possession of the Plaintiffs & others in respect of Hal Plot No. 844/1120, Plot No. 203/ 200 & Plot No. 844/1201. The Kissam of the land was described as Gramya Jungle. Though major part of the suit land is agricultural land, some trees planted by the Plaintiffs are standing on a portion of the land. The local R.I. threatened to evict the Plaintiffs due to note of possession of the Defendants. Therefore, they filed lease cases before the Tahasildar, Kakatpur & also filed the suit before the Trial Court for the aforesaid relief. During pendency of the suit, Opp. Parties 2 to 6 filed an application under Order 1 Rule 10 of the CPC to implead them as proper parties to the suit as the lands are communal lands & being used by the villagers as grazing field. They also raised their objections in the lease cases before the Tahasildar to protect their right. To their application under Order 1 Rule 10 of the Civil Procedure Code, the Plaintiffs filed objections stating therein that the allegations made by the villagers were false. The nature of the land in question was neither communal nor Gochar. It was recorded as Abadjogya Anabadi. Hence, the applicants were not necessary parties to the suit & their application was liable to be rejected.

3. Considering the contentions of the parties, the Learned Civil Judge (Junior Division), Nimapara allowed the petition filed by Opp. Parties 2 to 6 holding that the land in respect of Khata No. 175 is recorded as Rakhit & Plot No. 203/1200 is recorded as Gramya Jungle so also Plot No. 844/1201. Since the villagers have direct interest in the suit schedule land & they claimed to be the representative of the village, they are to be impleaded as Defendants.

4. Learned Counsel appearing for the Plaintiff-Petitioners submitted that from the ROR it appears that the land was recorded as Abadajogya Anabadi & it was not at all communal in nature. Therefore, Opp. Parties 2 to 6 should not be impleaded as Defendants to the suit. He further submitted that since the Plaintiffs claimed the relief of occupancy status in respect of the suit land, the presence of Opp. Parties 2 to 6 was not at all necessary for effective & complete adjudication of the case. Therefore, impugned order is liable to be set aside.

5. Learned Counsel appearing for Opp. Parties 2 to 6 submitted that the land was recorded as Anabadi & described as Puratan Patita in the Sabik settlement ROR of the year 1927-28. After abolition of the estate & vesting of the same with the State Government, the said land was recorded as Abada Jogya Anabadi & Rakhita Anabadi & the Kissam of the land was Gramya Jungle. He submitted that neither the ex-intermediary had furnished any Jamabandi in favour of Shyama Swain nor had the land been settled u/s 6, 7 & 8 of the Orissa Estates Abolition Act. Therefore, the Tahasildar, Kakatpur initiated encroachment cases against the

Petitioners for their eviction from the disputed land in the year 2004 & also in the year 2008 in respect of some of the disputed lands. He further submitted that the Government also issued a notification vide letter No. 38369/R dated 27.6.1989 wherein it was decided to delete the notes of unauthorized possession of Government lands from the Government Anabadi Khata. Since the lands are being used by the villagers as grazing field & the Kissam of the land is Gramya Jungle, the note of illegal possession in the ROR needs to be ignored. The nature of the land is communal & the villagers have a right over the disputed land. Therefore, their application for being impleaded as Defendants in the suit has been rightly allowed by the Court below. Hence, this Court should not interfere with the impugned order.

6. From the rival submissions of the parties, it appears that Opp. Parties 2 to 6 filed an application under Order 1 Rule 10 of the CPC in a representative capacity representing the villagers of village Bamera as provided under Order 1 Rule 8 of the Civil Procedure Code. The Plaintiffs have filed the aforesaid suit for declaration of their occupancy right over the disputed land impleading the State Government as parties. From the record it further appears that in the Hal Settlement, the land was described as Gramya Jungle Rakhita Anabadi.

7. Order 1 Rule 10 of the CPC makes a provision regarding necessary & proper parties to the suit. A person who has "direct interest" in the subject-matter of litigation can be impleaded as party. "Direct interest" means direct in the issues between the Plaintiff & the Defendant. A person is legally interested in the question involved in the suit only if he can show that it may lead to a result that may affect him legally, that is curtailing his legal rights. Interest must be one which law recognizes. Power vested under the rule is discretionary & it is wide. Whether a person will be impleaded as a party in the suit or not, does not depend merely on the wish of the Plaintiff. The policy of law is to avoid multiplicity of litigation. The true test is not so much in an analysis of what were the constituents of their rights but rather in what would be the result, on the subject-matter of the action if their rights could be established. The rule empowers the Court to implead a person even if his presence is necessary for considering the case of the Defendants to adjudicate a dispute between the Defendant & the person proposed to be impleaded as a party. The doctrine of dominos litis is subject to the power of the Court under Order 1 Rule 10 of the Civil Procedure Code.

8. The Apex Court in the case of Ramesh Hirachand Kundanmal Vs. Municipal Corporation of Greater Bombay and Others, referring to its earlier decision in the case of Razia Begum Vs. Sahebzadi Anwar Begum and Others, , has observed that the Courts in India have not treated the matter of addition of parties as raising any question of the initial jurisdiction of the Court & that a person to be added as a party to a suit, he should have a direct interest in the subject-matter of the litigation whether it be the questions relating to movable or immovable property. In the said case, the Apex Court has held that it is, therefore,

necessary that the person must be directly or legally interested in the action in the answer, i.e., he can say that the litigation may lead to a result which will affect him legally that is by curtailing his legal rights. Therefore, the question of addition of a party whom Plaintiff did not choose to add, would depend upon facts & circumstances of each case depending upon the assertions in the pleadings. Where status of a person is the dispute direct interest of the party may not be insisted upon since such status would have far reaching further effect. Where property is in dispute, direct interest has to be found out to add him as a party.

9. In the present case, the property is in dispute. Opp. Parties 2 to 6 filed the application in a representative capacity representing the villagers as they have a right over the said property which is being used as a grazing field & the same is also described as Gramya Jungle. While granting relief to the Plaintiffs, it has to be considered whether the disputed property is communal in nature & Gramya Jungle & Opp. Parties 2 to 6 can be said to have direct interest in the property to that effect as it was used by the villagers & if the Plaintiffs' prayer for permanent injunction will be allowed, it would directly affect the interest of the villagers, Therefore, considering the same the Learned Civil Judge (Junior Division), Nimapara has passed the impugned order impleading Opp. Parties 2 to 6 as parties to the suit.

10. Since there is no error apparent on the face of the impugned order, this Court, in exercise of the jurisdiction under Article 227 of the Constitution of India, is not inclined to interfere with the impugned Order Dated 30.10.2008 passed by the Learned Civil Judge (Junior Division), Nimapara in C.S. No. 157 of 2007. Accordingly, the Writ Petition is dismissed. No costs.