
(1991) 05 OHC CK 0002
In the Orissa High Court
Case No : Misc. Appeal No. 40 of 1987

Dhruba Charan Hota

APPELLANT

Vs

Kanhu Charan Hota

RESPONDENT

Date of Decision : 02-05-1991

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 14 Rule 2, Order 14 Rule 2(1), Order 14 Rule 2(2)

Citation : (1991) 05 OHC CK 0002

Hon'ble Judges : A. Pasayat, J

Bench : Single Bench

Judgement

A. Pasayat, J.—In this appeal the challenge is to the order passed by the learned Subordinate Judge, Jagatsinghpur. The appeal was directed, against the order passed by the learned Munsif, Jagatsinghpur adjudicating on a preliminary issue. He held that suit is barred by principles of res-judicata. The relevant issue is as follows:

Is the suit barred by principles of res judicata?

2. Before dealing with the respective claim, I shall deal with the question whether such an issue could have been adjudicated" as a preliminary issue. Resolution of this question rests on the scope and ambit of Order 14 Rule 2 of the Code of Civil Procedure, 1908 (in short the "Code"). Sub-rule (1) thereof mandates that notwithstanding that a case may be disposed of on a preliminary issue, the Court shall, subject to the provisions of Sub-rule (2), pronounce judgment on all issues. Executions to the general mandate are contained in Sub-rule (2) which empowers a court to decide and dispose of a case or any part thereof on an issue of law only, where issue both of law and of fact arise in the same suit. The issue in question must relate to the jurisdiction of the Court or a bar to the suit created by any law for the time being in force. The question whether an issue relating to res judicata could be decided as a preliminary issue came up for consideration of this Court in the case of Bairagi Ch. Das Vs. Kartik

Chandra Das and Others, . It was held that issue relating to res judicata was not an issue of law and could not be decided as a preliminary issue. The view expressed in the said case was approved by. a Division Bench of this Court in the case of Madhabananda Ray and Another Vs. Spencer and Company Ltd., . In that, view of the matter, the order of the learned Munsif deciding the issue of res judicata as a preliminary issue is indefensible.

3. The order of the learned Munsif was assailed before the learned Subordinate Judge, who allowed the appeal and remanded the matter to the lower Court for fresh disposal in accordance with law. He has remanded the case with certain observations. The remand does not suffer from any infirmity, but adjudication by the learned Munsif was only on the issue of res judicata. The entire matter should also now be adjudicated afresh by the learned Munsif. The learned Subordinate Judge did not deal with the question of adjudication of preliminary issue and heard the appeal on merits. Since there was no effective adjudication during trial appropriate course for him would have been to remand the matter to the learned Munsif for fresh adjudication, without expressing any opinion on any other issues.

4. In the circumstances while I agreeing with the operative part of the judgment to the effect that the suit was to be adjudicated afresh, I make it clear that a fresh adjudication has to be made on all issues involved in the suit. The observations of the learned Subordinate Judge were unnecessary.

The Miscellaneous Appeal is disposed of accordingly.