

**(1968) 04 OHC CK 0014**  
**In the Orissa High Court**  
**Case No : Civil Revision No. 299 of 1965**

Dr. Sk Wajid Ali

APPELLANT

Vs

Mst. Jiga Bibi

RESPONDENT

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**Date of Decision :** 11-04-1968

**Acts Referred:**

Civil Procedure Code, 1908 (CPC) — Order 6 Rule 17, Order 7 Rule 11, 115, 2(2)  
Specific Relief Act, 1877 — Section 42

**Citation :** AIR 1968 Ori 183 : (1968) 34 CLT 549

**Hon'ble Judges :** G.K. Misra, J

**Bench :** Single Bench

**Advocate :** B.B. Rath and Md. Y.A. Rahim, for the Appellant; S.K. Rahenoma and S.P. Acharya, for the Respondent

**Final Decision :** Dismissed

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## Judgement

G.K. Misra, J.—Title suit No. 41 of 1963 was filed in the Court of the Munsif Kendra-para. Originally the suit was valued at Rs 75. The prayers were for a declaration that the disputed land was the plaintiff's occupancy Chandna holding; for confirmation of possession: for a declaration that the defendant had no title or possession therein and for such other reliefs as the plaintiff is entitled to in law and equity. Amongst other defences the valuation of the suit and the insufficiency of Court fee payable were challenged. On 11-9-64 the Additional Munsif held that the market value of the suit land was Rs 4000. Plaintiff was directed to amend the plaint and pay the requisite ad valorem Court fee. Plaintiff amend- ed the plaint and valued the suit at Rupees 4000, but filed an application under Order 33, Rule 1, C. P. C. for permission to sue in forma pauperis. This application was dismissed on 26-7-65 on a finding that the plaintiff was not a pauper and had capacity to pay the ad-valorem Court fee. On 17-4-65 plaintiff filed an application for amendment of the plaint to delete certain reliefs. In that application the plaintiff prayed that the prayers Ka and Kha in the original plaint were to be deleted and in their place a prayer to the effect "that the disputed land and the registered sale deed standing in the name of the defendant are to

be declared Benami" is to be inserted, and the original prayer Ga and Gha were to be renumbered as Kha and Ga respectively. In substance, on the basis of amendment the prayer in the plaint is for a declaration that the disputed land and the registered sale deed stood benami in the name of the defendant in which she had no right, title and interest. There is no dispute that the amended prayer is only a declaratory relief.

On the basis of this amendment, plaintiff wanted to pay Court fee of Rs. 22.50 P as the declaratory suit was valued at Rs. 4000. The Court fee paid on the original plaint was Rs 7.50 P. If the amendment had been allowed plaintiff was to pay a further Court fee of Rs 15 only and not ad-valorem Court fee on Rs. 4000.

On 13-9-65 the application for amendment was rejected by the learned Munsif. Against this order the Civil Revision was filed on 22-10-65 No prayer for stay of the suit was made in the civil revision. The trial Court granted Unit to the plaintiff to pay deficit ad valorem Court fee on Rs 4000 on various dates. As it was not ultimately paid, the plaint was rejected on 29-3-66. An application under Order 9, Rule 9, C. P. C., for restoration of the suit was dismissed on 4-4-66 A similar application for restoration of the suit under Sec. 151 C. P. C., was dismissed on 14-7-66 The Civil Revision was admitted on 20-4-66 after the rejection of the plaint

2. Two questions arise in the civil revision.

(i) Was the order refusing the prayer for amendment of the plaint to delete certain reliefs contrary to law and passed in illegal exercise of jurisdiction?

(ii) If the order was contrary to law. can this Court exercise its power u/s 115 C P. C. to set it aside even though no appeal was filed against the order rejecting the plaint?

3. The learned Munsif did not allow the amendment to delete the first two reliefs in the original plaint as the nature of the suit would be changed. The view taken by him is contrary to law Even if the amendment was allowed there would be no change in the nature of the suit The averments in the plaint relating to material facts were not altered. Plaintiff's case was that he acquired the disputed land in the name of the defendant. The registered sale deed standing in the name of the defendant was benami and that the plaintiff was in possession. These facts were contested in the written statement. If ultimately the Court finds that plaintiff's versions that the suit land stood benami in the name of the defendant and that the plaintiff was in possession were true, plaintiff's prayer for a mere declaration is tenable and the suit would not fail due to absence of a prayer for consequential relief of confirmation of possession or, in the alternative. for recovery of possession. Section 42 of the old Specific Relief Act would not be a bar in such a case. If, on the other hand, the Court comes to a conclusion on evidence that the plaintiff was not in possession, the suit is bound to fail as the plaintiff sought no consequential relief. In either case the nature of the suit is not changed. Only the reliefs are different. Before evidence is gone into and a finding is recorded

thereon, Court is not in a position to say that the averments made in the plaint are false and cannot compel the plaintiff to ask for consequential relief. That is a risk which the plaintiff takes and on that basis pays Court fee. If ultimately the framing of the suit is found to be bad due to absence of consequential relief, which is to be prayed on the facts and circumstances of a particular case the suit is bound to be dismissed. But that is at a much later stage when the Court comes to a conclusion contrary to the averments in the plaint. The learned Munsif failed to keep in view this legal position and exercised his jurisdiction illegally in rejecting the amendment of the reliefs sought for. Change of reliefs with material averments remaining intact, does not alter the nature of the suit.

4. The next point for consideration is whether this Court in exercise of its revisional jurisdiction would set aside the impugned order when the petitioner did not file an appeal against the order rejecting the plaint. To recall the facts the impugned order was passed on 13-9-1965. The civil revision was filed on 22-10-65. No order was taken from the High Court to stay further proceedings in the suit. The result was that the plaint was rejected on 29-3-1966 when the deficit Court fee called upon from time to time was not paid. The order rejecting the plaint is a decree within the meaning of Section 2(2) C P C and an appeal lies therefrom. If the order dated 29-3-1966 is appealable, this Court would not exercise its jurisdiction under Sec 115. C. P. C. to set aside the impugned order even though it might be contrary to law.

5. Mr Rahim placed reliance on *Radha Krishna Mohapatra Vs. Bhuyan Sri Shyam Sundar Mohapatra and Others*, ; *Kanailal Mitra Vs. Pannasashi Mitra*, and *Basuki Prasad Singh Vs. Satya Kinkar Sahana*, , in support of his contention that if the order dated 13-9-65 is contrary to law, the subsequent rejection of the plaint would not stand in the way of this Court to exercise its revisional jurisdiction. *Radha Krishna Mohapatra Vs. Bhuyan Sri Shyam Sundar Mohapatra and Others*, , is clearly distinguishable and has no application to the facts of this case. Therein, the petitioner applied for substitution as the sole heir of the plaintiff. As the application for substitution was dismissed, the suit was held to have abated. This court interfered in that case as the petitioner, after his application for substitution was rejected, had no right of appeal. He could have filed an appeal only with the permission of the Court and not on his own right after the substitution application was rejected. As he had no right of appeal, a revision was maintainable and the subsequent dismissal of the suit was set aside. *Kanailal Mitra Vs. Pannasashi Mitra*, , is similarly distinguishable and was referred to in the very Orissa decision. *Basuki Prasad Singh Vs. Satya Kinkar Sahana*, , however, fully supports Mr. Rahim's contention. On similar facts, a Bench of the Patna High Court set aside the order rejecting the plaint even though no appeal had been filed. In Paragraph 7. their Lordships observed thus:

"Lastly reference should be made to the argument of the opposite party that the order rejecting the plaint having the force of a decree and having become final, it cannot be interfered with at this stage. But it should be observed that by

interfering with the order of the Sub Judge demanding the deficit Court fee we ought, of necessity as a consequence to set aside the order of the Subordinate Judge rejecting the plaint"

The passage is a bald expression of their Lordships' view and save no reason in support thereof

6. The matter was fully considered in *Paruchuru Thirumala Satyanarayanacharyulu and Another Vs. Vannava Ramalingam and Others*, . *Satyanarayana-charyulu v. Ramalingam*. Their Lordships held that where an order directing payment of additional Court fee is not complied with and it is followed by an order rejecting the plaint, a revision petition is not maintainable. The proper remedy is only by way of an appeal against the order rejecting plaint which is a decree. The petitioner should have obtained a stay order from the High Court and should not have allowed the plaint to be rejected. I am in respectful agreement with the aforesaid view and with respect dissent from *Basuki Prasad Singh Vs. Satya Kinkar Sahana*, .

Thus though the order of the learned Munsif in refusing amendment was contrary to law, the order cannot be set aside in revision.

7. In the result, the revision fails and is dismissed. But in the circumstances, parties are to bear their own costs throughout.