

(1986) 11 OHC CK 0007

In the Orissa High Court

Case No : Civil Revision No. 607 of 1983

Gayadhar Roul and Another

APPELLANT

Vs

Batakrushna Roul and Others

RESPONDENT

Date of Decision : 06-11-1986

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 10

Citation : (1987) 63 CLT 83

Hon'ble Judges : D.P. Mohapatra, J

Bench : Single Bench

Advocate : M.R. Panda, for the Appellant; Additional Government Advocate and S. Misra, for the Respondent

Final Decision : Dismissed

Judgement

D.P. Mohapatra, J.—The Petitioners purporting to represent the villagers of Chakradharpur filed an application under Order 1, Rule 10, Code of Civil Procedure, to be impleaded as parties in Original Suit No. 49 of 1982 pending in the court of the Munsif, Balasore. The said application having been rejected by the trial court by order dated 3-8-83 they have filed this revision petition challenging the said order.

2. The opposite parties 1 and 2 filed the aforementioned suit against the State of Orissa, opposite party No. 3, for declaration that they are the occupancy tenants in respect of the suit land. The gist of their case was that the suit properties were allotted to one Krushna Prasad Mahala in a family partition and he possessed the said properties exclusively after the partition, Dayanidhi Mahala, father of the Plaintiffs, took the suit properties on lease from Krushna Chandra Mahala on 11-5-32 and thereafter amalgamated it with his homestead and possessed the same. Since the father of the Plaintiffs was a settled raiyat of the village, he acquired occupancy tenancy in respect of the suit properties. The grievance of the Plaintiffs was that in the last settlement the suit properties were erroneously recorded as Rakhit Anabadi. Hence the suit.

3. During pendency of the suit the Petitioners filed the application under Order 1, Rule 10, CPC on 11-4-83 for being impleaded as parties in the proceeding stating, inter alia, that the villagers of Chakradharpur are vitally interested in the subject matter of the suit since they have been using the properties as passage and cremation ground since long. The villagers have been asserting their claim before different authorities. Though the Plaintiffs were aware of this position they did not implead the villagers as parties in the suit to avoid real contest in the litigation.

4. In their objection to the said application the Plaintiffs denied the assertions made in the application that the suit properties or any portion thereof was being used by the villagers as cremation ground or as common passage. According to them, their dispute was essentially with the State Government and presence of the villagers was not necessary for property adjudication of the matter. The Plaintiffs took a specific objection that an earlier application containing similar averments filed on behalf of the villagers of Chakradharpur was rejected by the trial court and after they failed in their attempt with the said application, the present Petitioners have again come up with this application purporting to represent the villagers.

5. On consideration of the case of both the parties the trial court rejected the application both on the ground that an earlier application on behalf of the villagers of Chakradharapur with similar claim seeking similar relief having been rejected on merit, the present application is hit by the principle of res judicata. The court further took the view that presence of the villagers of Chakradharpur was not necessary for proper adjudication of the dispute in the suit.

6. The learned Counsel for the Petitioners challenged both the grounds stated in the impugned order. From the order-sheet of the trial court, it appears that by order dated 8-2-83 the court rejected the petition dated 27-9-82 under Order 1, Rule 10, CPC filed by Keshab Chandra Raul and Babaji Majhi on behalf of the villagers of Chakradharpur. On perusal of the said order it appears that the application was considered on merits and after discussing the contentions raised on behalf of the Petitioners and the objections on behalf of the Plaintiffs in detail, the court came to hold that the dispute in the suit could well be adjudicated in the absence of the third party-Petitioners, that is, the villagers of Chakradharpur. This order admittedly was not challenged by the applicants. Perusal of the application on which this order was passed and the subsequent application dated 11-4-83 on which the impugned order has been passed shows that the averments in the two applications are similar on all material aspects. It is thus clear that same contentions raised on the basis of similar averments of facts made on behalf of the villagers of Chakradharpur were considered by the trial court on merit and were rejected. Therefore, the subsequent application for the self-same relief again on behalf of the villagers was rightly held by the trial court to be hit by the principle of res judicata. Indeed if the villagers were actually interested in participating in the proceedings in the suit, then they should have

taken steps to challenge the order dated 8-2-83 by which order the application under Order 1, Rule 10, CPC was rejected. They having failed to do so, cannot be permitted to re-agitate the matter before the trial court over and over again.

7. The learned Counsel for the Petitioners contended that on merit the Petitioners have a strong case and the previous oral as well as the impugned order rejecting the applications under Order 1, Rule 10, CPC are clearly erroneous. In view of the position that the subsequent application is hit by the principle of res judicata and the previous order is not under challenge in the revision petition, the question of considering the merit of the petition does not arise. However, it is noticed that the trial court considered the submission of the Petitioners on merit and reiterated its earlier view that the presence of the villagers is not necessary for proper adjudication of the dispute in the suit and the right title and interest if any of the villagers of Chakradharpur will not be affected by any decree if passed in favour of the Plaintiffs in the present suit.

8. In view of the discussions in the foregoing paragraphs, there is no scope for interfering with the impugned order in exercise of revisional jurisdiction by this Court. The revision petition is accordingly dismissed, but in the circumstances of the case without any order as to costs.