

(2007) 09 OHC CK 0049
In the Orissa High Court

Girija Sankar Dwibedi and Others

APPELLANT

Vs

Somanath Dwibedi and Others

RESPONDENT

Date of Decision : 14-09-2007

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 6 Rule 16

Citation : (2008) 105 CLT 272 : (2007) 2 OLR 655

Hon'ble Judges : L. Mohapatra, J

Bench : Single Bench

Judgement

L. Mohapatra, J.—Defendants 1 to 7 are the petitioners before this Court questioning the legality of the order dated 8.8.2007 passed by the learned Civil Judge (Senior Division), Rourkela in Civil Suit No. 60 of 2005 rejecting an application filed by them under Order 6, Rule 16 C.P.C. for a direction to the plaintiff-opposite party No. 1 to strike out the unnecessary pleadings appearing in paragraphs 4 to 9 and 11 to 17 of the plaint.

2. The plaintiff-opposite party No. 1 has filed a suit for declaration that the registered will dated 16.1.2004 had not been executed by the deceased Dhaneswari Dwibedi and alternatively for a declaration that the said registered will is invalid, void and not enforceable in the eye of law and for further declaration that the legal proceedings including Mutation Case Nos. 565, 566 and 567 of 2004 pending before the Tahasiidar, Rourkela on the basis of the said will are not maintainable.

3. The case of the aforesaid defendants in the petition filed under Order 6, Rule 16 C.P.C. is that in paragraphs 4 to 9 and 11 to 17 of the plaint, the plaintiff-opposite party No. 1 has narrated the family genealogy of the parties and the manner in which the landed properties were acquired. Such averments include not only the landed properties covered under the will but also certain other lands which are not in dispute in the suit. It is further contended by the said defendants in the petition that in these paragraphs not only the family genealogy and the manner in which the properties are acquired are described but also there

is mention of another suit pending in the Court of the learned Ad hoc Additional District Judge, Fast Track Court, Rourkela for partition and such pleadings are unnecessary for the purpose of deciding the suit. According to the said defendants, the averments which are required in respect of the suit properties covered under the will are only to be retained in the plaint and rest of the averments which are not related to the will or the properties covered under the will are unnecessary and irrelevant for the purpose of deciding the suit and should be deleted from the plaint. An objection was filed by the plaintiff-opposite party No. 1 stating therein that either the pleadings in the plaint are unnecessary, vexatious, frivolous nor scandalous and such pleadings are necessary to adjudicate the real controversy between the parties.

The trial Court on consideration of the pleadings taken in the aforesaid paragraphs was of the view that such pleadings are necessary for the purpose of deciding the issues involved in the suit and accordingly rejected the petition.

4. Shri N.C.Pati, the learned Counsel appearing for the petitioners submitted that the pleadings in the aforesaid paragraphs are mostly unnecessary for deciding the case keeping in mind the nature of dispute between the parties and the relief prayed for. According to the learned Counsel, the entire relief in the suit relates to legality of the will dated 16.1.2004 and, therefore, all averments relating to execution of the will or acquisition of land covered under the will may be necessary for the purpose of deciding the suit but in respect of other properties which neither covered under the will nor in dispute need not be pleaded since they are wholly irrelevant for the purpose of the suit. It is further submitted that the pleadings in the aforesaid paragraphs clearly give a picture of family genealogy, the manner in which the properties were acquired by the family, which not only cover the properties under the will but also some other properties which are not in dispute and accordingly, those parts, of the pleadings which do not relate to the will or the properties covered under the will are irrelevant and unnecessary.

Shri Sahu, the learned Counsel appearing for the plaintiff-opposite party No. 1 on the other hand, submitted that unless the family history and the manner in which the properties were acquired are pleaded, it may not be possible on the part of the plaintiff to prove his case in absence of the pleadings. Shri Sahu, the learned Counsel further submitted that the family genealogy and the manner in which the properties were acquired by the parties are relevant and cannot be called unnecessary, vexatious or scandalous for the purpose of deciding the suit.

5. Undisputedly the suit has been filed for the relief as stated earlier. Ordinarily, the pleadings in the plaint must relate to the relief claimed in the suit. Any other pleading which does not relate to the suit or has no relevancy for deciding the suit should be treated as unnecessary and can be deleted from the plaint. In the case of *Sk. IIIias v. Co-operative for American Relief Everywhere, India and Ors.* reported in 2006 (II) OLR 185 : 2006 (II) CLR 345 this Court with reference to several decisions of the Supreme Court as well as this Court held that scandalous

allegation which are not necessary to be made in order to decide the suit should be deleted from the plaint. So far as the present case is concerned, it is nobodies case that the pleadings in the aforesaid paragraphs of the plaint are either vexatious or scandalous. The case of the defendants 1 to 7 is that such pleadings are not necessary for the purpose of deciding the suit. The learned Counsel for the parties have produced a copy of the plaint for perusal of the Court. On perusal of the pleadings in paragraphs 4 to 9 and 11 to 17, it appears that some pleadings are necessary for the purpose of deciding the suit and some of the pleadings relate to some other properties, which may not be necessary for deciding the suit. The trial Court in the impugned order has not discussed as to how the pleadings made in the aforesaid paragraphs are wholly necessary for the purpose of deciding the suit except that the family history and the manner of acquisition of the land having been described in the aforesaid paragraphs, they are necessary for the purpose of deciding the suit. There is no dispute that any pleadings, which relate to the relief claimed in the plaint, are relevant for the purpose of the suit but on examination of the plaint, it appears that there are some pleadings which may not be required for the purpose of deciding the suit specifically in relation to the relief claimed. I am, therefore of the view that the matter should be reconsidered by the learned Civil Judge.

6. I, accordingly, set aside the impugned order and direct the learned Civil Judge to look into the pleadings made in the aforesaid paragraphs with reference to the relief claimed in the suit and take a decision relating to pleadings, which are necessary for the purpose of deciding the suit and the pleadings, which are not necessary for the purpose. Such pleadings, which are not necessary for the purpose of deciding the suit, should be directed to be deleted.

With the above observation and direction, the writ application is disposed of.