

(1983) 01 OHC CK 0024
In the Orissa High Court
Case No : Civil Revision No. 191 of 1978

Harihar Misra

APPELLANT

Vs

Haripada Panigrahi (dead) and after him Sailabala Panigrahi
and Others

RESPONDENT

Date of Decision : 19-01-1983

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 16, 146, 151, 47
Registration Act, 1908 — Section 75

Citation : (1983) 56 CLT 21

Hon'ble Judges : P.K. Mohanti, J

Bench : Single Bench

Advocate : P.K. Misra, for the Appellant; M.N. Das, P.V. Ramdas and M.M. Das,
for the Respondent

Final Decision : Dismissed

Judgement

P.K. Mohanti, J.—This revisional application has been preferred under the following circumstances:

On 12-9-1960 Petitioner obtained a final decree for mesne profits amounting to Rs. 29,075/- in Money Suit No. 185 of 1955 of the court" of the Munsif, Aska against opposite parties 4 to 8 and levied the same in execution in E.P. No. 109 of 1962 which was dismissed on part satisfaction on 27-11-1962. On 16-1-1963, opposite parties 1 to 3 and 9 claiming themselves to be transferee decree-holders on the basis of an agreement dated 20-10-1959 filed E.P. No. 19 of 1963 for realisation of the balance decretal dues. On 17-10-1963 the Petitioner filed an objection in E.P. No. 19 of 1963 challenging the genuineness of the alleged agreement dated 20-10-1959. On the same day, i.e., 17-10-1963 the Petitioner filed E.P. No. 282 of 1963 in the court of the Munsif, Aska for realisation of the balance decretal dues. (This E.P. was transferred to the court of the Subordinate Judge, Aska on 11-2-1966 and was re-numbered as J.P. No. 28 of 1966. Again on 7-3-1970 it was re-transferred to the court of the, Munsif, Aska.) On

26-3-1965 the objection filed by the Petitioner in E.P. No. 19 of 1963 was allowed. Consequently E.P. No. 19 of 1963 was dismissed and S.P. No. 282 of 1963 was directed to be proceeded with. Aggrieved by this order, opposite parties 1 to 3 and 9 filed Misc. Appeal No. 8 of 1966 which was dismissed on 4-2-1967 by the Additional District Judge, Ganjam. Thereupon opposite parties 1 to 3 and 9 preferred Misc. Appeal No. 34, of 1967 which was dismissed by this Court on 5-8-1968 on the finding that the objection filed by the Petitioner did not come within the purview of Section 47, CPC and hence no appeal, either first or second lay against the order of the learned, Munsif and that the remedy of opposite parties 1 to 3 and 9 was to file a suit. On 9-10-1968 opposite parties 1 to 3 and 9 filed an application under Order 21, Rule 16, CPC in the aforesaid E.P. No. 28 of 1966 (E.P. No. 282 of 1963) for being substituted in place of the original decree-holder. They claimed to be assigned of the decree by virtue of added of assignment alleged to have been executed in their favour by the Petitioner on 20-5-1965 and got registered u/s 75 of the Indian Registration Act. The Petitioner filed objection on various grounds impeaching the validity and genuineness of the deed of assignment dated 20-5-1965. The application under Order 21, Rule 16, CPC was allowed by the learned Munsif, Aska by his order dated 16.2.1971 and opposite parties 1 to 3 and 9 were substituted in place of the original decree-holder. The Petitioner preferred MISC. Appeal No. 8 of 1971 against the aforesaid order dated 16.2.1971. The appeal was dismissed by the learned Subordinate Judge, Aska as not maintainable. Thereupon the Petitioner filed Misc. Appeal No. 40 of 1972 which was subsequently converted into Civil Revision No. 84 of 1974. The Civil Revision was allowed by this Court on 11-3-1974. The order of the executing court allowing the application under Order 21, Rule 16, CPC was set aside and the matter was remitted to the executing court for a fresh disposal after giving the Petitioner an opportunity to establish his objection by adducing evidence, if necessary. After remand, the case came up for hearing on 16-1-1978. On that day, the Petitioner was found absent on calls. The executing court heard the counsel for opposite parties 1 to 3 and 9 and posted the case to 17-1-1978 for orders. By order dated 17-1-1978 the petition under Order 21, Rule 16, CPC was allowed on the grounds that the Petitioner had failed to avail of the opportunity given to him as per the remand order and that the order dated 19-2-1968 passed by the learned Munsif, Aska in E.P. No. 107 of 1967 recognising opposite parties 1 to 3 and 9 as transferee-decree-holders constituted res judicata. It is against this order that the present civil revision has been preferred.

2. Opposite party No. 1 Haripada Panigrahi having died during the pendency of this civil revision, his legal representatives have been substituted as per order dated 27-8-1982.

3. It appears that during the pendency of E.P. No. 282 of 1963/(E.P. No. 28 of 1966) opposite parties 1 to 3 and 9 had filed E.P. No. 97 of 1967 on 27-9-1967 for realisation of the decretal dues claiming themselves to be assignees of the decree on the basis of the deed of assignment dated 20-5-1965. In that E.P. an

ex parte order was passed on 19-2-1968 recognising opposite parties 1 to 3 and 9 as transferee-decree, holders. Petitioner filed an application u/s 151, CPC for setting aside the ex parte order on the ground of non-service of notice.

The application was registered as M.J.C. No. 15 of 1971 and was dismissed on 16-2-1971 on the finding that the notices had been duly served on the Petitioner.

4. Order 21, Rule 16, CPC provides as follows:

Where a decree or, if a decree has been passed jointly in favour of two or more persons, the interest of any decree-holder in the decree is transferred by assignment in writing or by operation of law, the transferee may apply for execution of the decree to the court which passed it and the decree may be executed in the same manner and subject may be executed in the same manner and subject to the same conditions as if the application were made by such decree-holder:

Provided that, where the decree, or such interest as aforesaid, has been transferred by assignment, notice of such application shall be given to the transferor and the judgment-debtor, and the decree shall not be executed until the court has heard their objections (if any) to its execution:

Provided also that, where a decree for the payment of money against two or more persons has been transferred to one of them, it shall not be executed against the others.

Explanation-Nothing in this rule shall affect the provisions of Section 146, and a transferee of rights in the property, which is the subject-matter of the suit, may apply for execution of the decree without a separate assignment of the decree as required by this rule.

The principle underlying the rule is that no one can execute a decree except the decree-holder or a person to whom a decree is transferred by assignment in writing or by operation of law. The first proviso enjoins that notice of the application under Order 21, Rule 16, CPC shall be given to the transferor and the judgment-debtor and that the decree shall not be executed until the court heard their objection, if any, to its execution. The object of issuing notices to the transferor and the judgment-debtor is to determine once for all, and in the presence of all parties concerned, the validity of the assignment. The rule obviously contemplates the occasion when, for the first time, the assignee comes before the court to apply for execution. In the present case, opposite parties 1 to 3 and 9 did this when they applied on 27-9-1967 and E.P. No. 97 of 1967 was started. It appears from the order dated 16-2-1971 passed in the afore mentioned M.J.C. No. 150 1971 that opposite parties 1 to 3 and 9 applied for execution In E.P. No. 97 of 1967 claiming themselves to be the assignees of the decree on the basis of the deed of assignment dated 20-5-1965 and although notice of the execution petition was duly served on the Petitioner he did not file any objection and by order dated 19-2-1968 the assignment of the decree was

recognised by the executing court. Despite the order dated 19-2-1968 passed in E.P. No. 97 of 1967 opposite parties 1 to 3 and 9 filed on 9-10-1968 an application under Order 21, Rule 16, CPC in E.P. No. 28 of 1966 for being substituted in place of the original decree-holder. Instead of applying for substitution they could have filed an independent application for execution as transferee-decree-holders. It cannot be said that each time the transferee-decree-holder comes to get the decree executed he should apply under Order 21, Rule 16, Code of Civil Procedure. The Petitioner did not challenge the deed of assignment in E.P. No. 97 of 1967 by filing an objection. Although the Petitioner was given an opportunity to establish his objection as per order of remand passed in Civil Revision No. 84 of 1974 he did not avail of the opportunity and remained absent on 16-1-1978 when the matter came up for hearing after remand. Thus the Petitioner failed to avail of the opportunity given to him. It cannot, therefore, be said that the court below acted illegally or with material irregularity in the exercise of its jurisdiction in allowing the opposite parties 1 to 3 and 9 to be substituted in place of the original decree-holder.

5. There is, therefore, no merit in this civil revision and it is accordingly dismissed, but in the circumstances without any order as to costs.