

(1985) 02 OHC CK 0040

In the Orissa High Court

Case No : Civil Revision No"s. 703 and 704 of 1983

Jeypore Evengelical Lutheran Church

APPELLANT

Vs

Dr. Samuel Santhi Kumar Chaudhury and Another

RESPONDENT

Date of Decision : 04-02-1985

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 33 Rule 9, 115 , 115(1)

Citation : AIR 1985 Ori 195 : (1985) 59 CLT 207

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

Bench : Single Bench

Advocate : R. Mohanty and N. Patra, for the Appellant; S.S. Basu and G.S. Das, for the Respondent

Final Decision : Dismissed

Judgement

D.P. Mohapatra, J.—These applications u/s 115, Civil P.C. are directed against the orders passed by the Subordinate Judge, Jeypore rejecting the application of the petitioner to dispauper the plaintiff-opposite party No. 1. The parties in the two cases are the same and the cases involve similar questions of facts and law and the impugned orders are similar in nature. At hearing one set of argument has been advanced and this order will govern both the cases.

2. Civil Revision No. 703 of 1983 arises out of M.S. No. 14 of 1981 filed by the opposite party No. 1 initially claiming Rs. 9,893/- against the petitioner and the opposite party No. 2 towards cost of his movables which were allegedly removed by the latter. During pendency of the suit movables worth of Rs. 4,434/- were returned to the plaintiff-opposite party No. 1. Thereafter, he reduced the claim in the suit to Rs. 5,459/-. The court-fees payable on the plaint is Rs. 659.25.

Civil Revision No. 704 of 1983 relates to Title Suit No. 7 of 1981 filed by the Opposite Party No. 1 initially for a sum of Rs. 55,800/-against the petitioner and the Opposite Party No. 2 towards his arrears dues. During pendency of the suit, the plaintiff-opposite party No. 1 received a sum of Rs. 7,800/- in cash towards

his provident fund dues and salary for the month of August, 1976 from the petitioner-defendant No. 1. Thereafter, the plaintiff reduced his claim in the suit to Rs. 48,000/-. The court-fees payable on the plaint is Rs. 2,789.25 paise.

In both the suits, application filed by the Opposite Party No. 1 for permission to file the suit as an indigent person was dismissed by the trial court. On appeal order of the trial court was reversed and permission was accorded to the applicant to pursue the suit as indigent person. The petitioner filed an application in each of the suits to dispauper the opposite party on the ground that during pendency of the suit he has come to possess sufficient means to pay the requisite court-fees. The plaintiff-opposite party No. 1 in his objection to the application under Order 33, Rule 9 Civil P.C. stated inter alia that the sums received by him were small parts of the suit claims. Those sums were spent by him immediately after receiving them as he was in dire financial state after having been driven out from the service by the opposite party. The facts stated above are not in dispute.

3. The trial court on a consideration of the matter rejected the application filed by the petitioner holding that the sums received by the opposite party during pendency of the suit were in the nature of subsistence allowance and could not be taken into consideration for dispaupering the plaintiff-opposite party No. 1.

4. The facts stated in the foregoing paragraphs are not in controversy between the parties. The position is admitted that the opposite party No. 1 received sums of money from the petitioner during pendency of the suits and the said amounts were sufficient to pay the requisite court-fees in the respective cases. Sri N. Patra, learned counsel for the petitioner submits that the reasons given by the trial court for rejecting the application under Order 33, Rule 9 Civil P.C. are wholly erroneous and hence the impugned order cannot be sustained.

5. Before considering the merits of the contention raised by the learned counsel for the petitioner, another aspect of the matter, relating to the scope of interference by this Court, with the impugned order, in exercise of its revisional jurisdiction has to be considered first. In other words, assuming that the reasons set out in the impugned order do not stand scrutiny under law, will this Court be justified in interfering with the said order in exercise of its jurisdiction u/s 115 Civil P.C. Section 115, Civil P.C. as it stands after amendment reads as follows : --

"115. Revision :

1) The High Court may call for the record of any case which has been decided by any court subordinate to such High Court and in which no appeal lies thereto, and if such subordinate Court appears-

a) to have exercised a jurisdiction not vested in it by law, or

b) to have failed to exercise a jurisdiction so vested, or

c) to have acted in the exercise of its jurisdiction illegally or with material

irregularity,

the High Court may make such order in the case as it thinks fit;

Provided that the High Court shall not, under this Section, vary or reverse any order made, or any order deciding an issue, in the course of a suit or other proceeding, except where-

a) the order, if it had been made in favour of the party applying for revision, would have finally disposed of the suit or other proceeding, or

b) the order, if allowed to stand, would occasion a failure of justice or cause irreparable injury to the party against whom it was made.

2) The High Court shall not, under this section, vary or reverse any decree or order against which an appeal lies either to the High Court or to any Court subordinate thereto.

Explanation : In this section, the expression "any case which has been decided" includes any order made, or any order deciding an issue, in the course of a suit or other proceeding."

The position has to be accepted as well settled that Section 115 CPC is discretionary. A fair reading to Sub-section (1) of Section 115 Civil P.C. gives the unmistakable impression that while the High Court is empowered to call for the records of any case which has been decided by a Court subordinate to it in which no appeal lies thereto and examine if such subordinate court has exercised jurisdiction not vested in it by law, or has failed to exercise jurisdiction so vested, or has acted in the exercise of its jurisdiction illegally or with material irregularity, it cannot vary or reverse any order made, or any order deciding an issue, in the course of a suit or other proceeding, except where the order, if it has been made in favour of the party applying for revision, would have finally disposed of the suit or other proceeding, or order, if allowed to stand, would occasion a failure of justice or cause irreparable injury to the party against whom it was made. Thus, the revisions powers of the High Court have been curtailed under this provision.

Applying the aforesaid principle to the present case, the case, if at all, can come under Clause (b) of the proviso. But on a close scrutiny as I shall show presently the said provision too has no application to the case.

The matter of pauperism is correlated with payment of court-fees. The State Government is principally concerned with the payment of court-fees. This is not to say that the defendant has no locus standi to object to permission contemplated under Order 33, Rule 1 Civil P.C. being granted to the plaintiff or that he cannot apply under Order 33, Rule 9, CPC for dispaupering the plaintiff. But the position remains that he is not prejudiced in any manner if the plaintiff is permitted to pursue the suit as an indigent person. Admittedly, in this case the State has neither chosen to move the Court for dispaupering the plaintiff nor has

it challenged the impugned order rejecting a similar attempt by the defendant. In these circumstances, it cannot be said that if the impugned order is allowed to stand it would occasion a failure of justice or cause irreparable injury to the petitioner. Thus, in my opinion, the requirements of Section 115(1) CPC to enable this Court to reverse or vary the impugned order in exercise of revisional jurisdiction are not satisfied in this case. In view of this finding, it is unnecessary to go , into the question whether the impugned order can be sustained on merits.

6. Accordingly, the revision petitions fail and they are dismissed, but in the circumstances of the case without cost of these proceedings.