

(2021) 12 OHC CK 0080
In the Orissa High Court
Case No : A.H.O. No.143 of 1995

Judhistir Sahu @ Muli Sahu	Vs	APPELLANT
Hari Sahu (Since Deadl) Substituted His L.Rs. And Others		RESPONDENT

Date of Decision : 13-12-2021

Acts Referred:

Citation : (2021) 12 OHC CK 0080

Hon'ble Judges : Dr. S. Muralidhar, CJ;A. K. Mohapatra, J

Bench : Division Bench

Advocate : B. H. Mohanty, N. K. Acharya

Final Decision : Disposed Of

Judgement

1. The limited prayer that is urged by the Appellant in the present appeal, which is directed against a judgment dated 18th October, 1995 passed by the learned Single Judge in First Appeal No.99 of 1979, is that certain observations made in the impugned judgment in the said First Appeal which was at the instance of Defendant No.1 in a suit for partition, require to be clarified.
2. The Plaintiff-Respondent No.1 in the First Appeal had filed a Title Suit No.7 of 1978-I in the Court of subordinate seeking partition of her undivided 1/8th share of the suit property. On contest, the Trial Court decreed the suit in the preliminary form against Defendants 1, 9, 11, 12, 13 and 15 and ex parte against the other Defendants. The share of the Plaintiff (Respondent No.1 of the appeal) was determined as 1/12th. A direction was issued to the Civil Court Commissioner to effect partition by metes and bounds except the dwelling house.
3. One of the issues that arose was Issue No.8 in regard to which the trial Court held that the factum of adoption as claimed by Defendant No.15 has well been proved and there is an implied admission as to such adoption by Defendant No.1.
4. It is in regard to this observation that the present appeal has been filed. It is pointed out by Mr. Mohanty, learned counsel for the Appellant that the

observation in para 6 of the impugned judgment to the effect that "the claim and/or counter claim, as regards the issue of adoption of Defendant No.1 and Defendant No.15, is neither relevant nor pertinent so far as the claim for partition by the Plaintiff is concerned" requires to be clarified by this Court.

5. It is seen that the learned Single Judge further proceeded to observe that the above submission on behalf of Defendant No.1 was neither refuted by learned counsel for Plaintiff-Respondent No.1 nor controverted by Defendant No.15. The learned Single Judge was of the view that the framing of Issue No.8, in the contest of the suit, was unwarranted. The impugned judgment then states: "If any time in future such dispute arises, certainly it would be open to the parties to raise such issue and the same shall be decided by the court in proper way."

6. It is now pointed out by Mr. Mohanty that after the filing of the aforementioned First Appeal, sometime in 1991, a suit was filed by the present Appellant. Arising from the decision of the trial Court in that suit, and the order of the first appellate Court, the present Appellant has filed RSA No.367 of 2019 in this Court which is still pending. Mr. Mohanty's only prayer is that in the said pending RSA, it should be open to the Appellant to raise the issue of legality of the adoption in question notwithstanding the impugned judgment of the learned Single Judge, which is challenged in the present appeal.

7. Learned counsel for the Respondents has no objection to the aforementioned clarification being issued. It is accordingly clarified that the issue concerning adoption of Defendant No.15 by Defendant No.1 can be raised and examined in the pending RSA notwithstanding the impugned order dated 18th October, 1995 of the learned Single Judge in First Appeal No.99 of 1979. All the contentions of the parties vis-à-vis the said issue are left open to be urged in RSA No.367 of 2019.

8. The appeal is accordingly disposed of in the above terms.

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