
(1983) 08 OHC CK 0013
In the Orissa High Court
Case No : Civil Revision No. 54 of 1980

Khetrabasi Chhatoray

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 24-08-1983

Acts Referred:

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

Citation : (1983) 56 CLT 517 : (1984) 1 OLR 25

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

Bench : Single Bench

Advocate : A.K. Mohapatra, on behalf of P.K. Misra, for the Appellant; A.K. Padhi and Addl. Standing Counsel, for the Respondent

Final Decision : Dismissed

Judgement

P.K. Mohanti, J.—This revisional application is directed against an order of the learned Munsif of Puri allowing an application under Order 1, Rule 10, C. P. C. for addition of Opposite Parties Nos. 2 to 23 as defendants in the suit.

2. The petitioner as plaintiff brought O. S. No. 56 of 1979 (I) in the Court of the Munsif, Puri for a declaration of his title to and confirmation of possession over the disputed land, for a direction to correct the relevant record-of-rights and for a permanent injunction restraining the opposite party No. 1 (State of Orissa) from disturbing his possession. The opposite party Nos. 2 to 23 filed a petition under Order 1, Rule 10, C. P. C. for being impleaded as defendants on the ground that the suit plot is a tank and they have a right of user of its water. They further alleged that during the settlement proceedings, the petitioner was attempting to get the land recorded exclusively in his own name, but on their objection the Settlement Authorities made the correct entries in the record-of-rights. The petitioner filed counter contending that the opposite party Nos. 2 to 23 have no interest in the land in question and it was not necessary to implead them as defendants. The learned Munsif having allowed the petition under Order 1, Rule 10, C. P. C. the petitioners has come up in revision.

3. It is contended on behalf of the petitioner that opposite party Nos, 2 to 23 are neither necessary nor proper parties to the suit and as such, the petition under Order 1, Rule 10, C. P. C. should have been rejected by the learned Munsif.

4. A person is a necessary party if in his absence, no effective decree can be passed. He is a proper party if his presence is necessary for an effectual and complete adjudication. Order 1, Rule 10 (2), C. P C. runs as follows :--

"(2) The Court may at any stage of proceedings either upon or without the application of either party and on such terms as may appear to the Court to be just, order that the name of any --party improperly joined, whether as plaintiff or defendant, be struck out, and that the name of any person who ought to have been joined, whether as plaintiff or defendant, or whose presence before the Court may be necessary in order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the suit, be added."

5. There was a conflict of judicial authority on the question as to whether the expression "questions involved in the suit" should be interpreted in the narrower sense as embarrassing questions between the parties to the suit or should receive a wider interpretation as embarrassing questions between the parties to the suit and even third parties in proper case. In the case of Razia Begum v. Sahabzadi Anwar Begum and Ors. A. I. R. 1953 S. C. 886. their Lordships do not seem to have accepted the narrower interpretation in as much as they have held that even a proper party who is directly interested in the property involved can be added as a party. Their Lordships, however, held that in a suit relating to property in order that a person may be added as a party, he should have a direct interest as distinguished from a commercial interest in the subject-matter of litigation. In the case of Damodar Mohapatra v. State of Orissa, XXXIV (1968) C. L. T. 956, this court held that expression "all the questions involved in the suit" need not be confined to the questions as between the parties to the litigation and that the wider view is the correct view. The same view was reiterated in the cases of Daitari prasad Nayak v. Umakant Nayak A. I. R 1971 Ori 44, Kartik Chandra Mohanty v. State of Orissa 34 (1968) C. L. T 1410 and Gafur Khan v. Govt. of Orissa 55 (1983) C. L. T. 85. I find myself in respectful agreement with the view expressed by this court in the case referred to above.

6. In the instant case, it appears that the suit plot is a tank and in the remarks column of the finally published record-of-rights, there is a note against the suit plot that the water of the tank is used by the general public. It also appears from the materials on record that the petitioner wanted to get the suit land recorded exclusively in his name, but after hearing the objections raised by the villagers the Settlement Authorities made the entries in the record-of-rights to the above effect. In the present suit, the plaintiff claims exclusive title to the suit land and seeks a direction for correction of the relevant entry in the settlement record-of-rights. It is obvious that no decree can be passed in favour of the plaintiff, without affecting the rights of the villagers. I am, therefore, unable to hold that the opposite party Nos. 2 to 23 have no direct interest in the

subject-matter of litigation. It is immaterial that the plaintiff has chosen to seek relief only against the State of Orissa. The effect of the relief would be to destroy the effect of settlement entry and it would affect the rights of the villagers. It is thus clear that the opposite party Nos. 2 to 23 are directly interested in the result of the suit and in the proper a judication of the question involved therein.

7. It is well settled that the principle underlying the provisions of Order 1, Rule 10, C. P. C. is also to avoid multiplicity of suits and likelihood of conflict of decisions. If the present suit is decided in favour of the plaintiff, opposite party Nos. 8 to 23 would come up with another suit for declaration of their right to use the water of the tank and their suit may be decided differently. It is, therefore, necessary to avoid such conflict of decision. In the case of *Dwaraka Nath Sen v. Kishori Lal Gosain and Anr.* (1910) CLJ 426, Sir Ashutosh Mookerjee observed that the object of the Legislature is to avoid multiplicity of suits and to ensure that the dispute may be finally determined at the same time in the presence of all the parties interested without the delay and expenses of several actions on trials. In the case of *Anjaneya Sastri v. Kodhandapani Cbettiar and others* : A. I. R. 1936 Mad 449, it was also laid down that the rules relating to joinder of parties were based on principle of avoiding multiplicity of suits not merely as involving waste of time and money but also to avoid possible conflict of decisions. The same view has been taken by this Court in the cases of *Damodar Mohapatra v. State of Orissa* and *Gafur Khan v. Govt. of Orissa* referred to above.

8. On the facts and circumstances of the case, though opposite party Nos. 2 to 23 may not be necessary parties, their presence is necessary to enable the Court to effectually and completely adjudicate and settle the question involved in the suit. The learned Munsif was, therefore, justified in exercising his judicial discretion in favour of adding opposite party Nos. 2 to 23 as defendants in the suit. It cannot be said that he has exercised his jurisdiction either illegally or with material irregularity.

9. The Civil Revision fails and is dismissed; the order of the learned Munsif being maintained. Parties to bear their own costs incurred in this Court.