
(2016) 06 OHC CK 0017
In the Orissa High Court
Case No : C.M.P. No. 684 of 2016

Mahanta Laxmidhar Das

APPELLANT

Vs

Mahanta Sri Gopi Das Ji Maharaj

RESPONDENT

Date of Decision : 30-06-2016

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 26 Rule 10 (A)

Citation : (2016) 2 ILRCuttack 633

Hon'ble Judges : Biswanath Rath, J.

Bench : Single Bench

Advocate : Dr. Ashok Kumar Mohapatra, Senior Advocate, M/s. Alok Ku. Mohapatra, B. Panda, S.P. Mangaraj, T. Dash, S.K. Barik, S. Nath, A.K. Barik, Advocates, for the Petitioner; Mr. P.K. Mohanty, Senior Advocate, M/s. D.N. Mohapatra, J. Mahanta, P.K. Nayak, S.N. Das

Final Decision : Allowed

Judgement

Biswanath Rath, J.—The present Civil Miscellaneous Petition arises out of an order dated 15.3.2016 passed by the District Judge, Puri in C.S. No. 2/34 of 2008/2003 appearing at Annexure-3 thereby allowing an application at the instance of the plaintiffs-opposite party Nos. 1 & 2 under Order 26, Rule 10A of the Code of Civil Procedure and also thereby directing for sending the signatures appearing in the petition, affidavit, vaklatnama and deposition of Mahanta Natabar Das in Probate Misc. Case No.19/13 of 1982 along with the present Will vide Ext.A to the Deputy Superintendent Handwriting Bureau, Rasulgarh, Bhubaneswar for comparison.

2. Short facts involved in the case are that the opposite party Nos.1 & 2 filed a suit under Section 263 & Section 283 of the Indian Succession Act read with Section 151 of C.P.C. and Section 47 of C.P.C. before the District Judge, Puri with a prayer for revoking or annulling the Will granted or probated and letters of administration in Probate Misc. Case No.14/5 of 2008/97 in favour of the defendant No.1 therein. During pendency of the suit, the plaintiffs-opposite

parties Nos. 1 & 2 filed a petition under Order 26, Rule 10 (A) of C.P.C. with an intention of examining the genuineness of the signature of the particular persons. The opposite party Nos. 1 & 2 also contended therein that on an earlier occasion, the trial Court allowed the prayer of the opposite party No. 1. The present petitioner challenged the said order in W.P.(C) No. 14977 of 2013 and this Court while disposing the said writ petition directed the lower Court for considering the said application after closure of the evidence. The further facts as narrated by the opposite party No.1 in his application under Order 26, Rule 10 (A) of C.P.C. is that the plaintiff has challenged the Will as forged and the signature of Natabar Das was also forged.

It is under these circumstances, the opposite party No. 1 asserted in the Court below that necessity arises for sending the signatures of Mahanta Natabar Das contained in different documents to a handwriting expert to examine as to if the signatures in the Will is genuine or not and if the signature of Laxmidhar Mohapatra in the compromise petition is genuine or not and for submission of a report.

3. By submitting his objection the petitioner inter alia contended therein that in absence of specific pleading with regard to genuineness of the signatures of the aforesaid persons, the provisions under Order 26, Rule 10 (A) shall not be attracted. Further in view of not disputing the signature of Mahanta Natabar Das appearing in the Will vide Ext. A during examination in chief of the plaintiff and further in absence of any suggestion to that effect to the petitioner's witnesses, the petition is also otherwise not maintainable.

4. Hearing the rival contentions of the parties and after considering their respective pleadings, learned District Judge, Puri while disposing the application under Order 26, Rule 10 (A) of C.P.C. along with some other applications, allowed the opposite party No.1's request for sending the signature along with the documents indicated herein above for expert opinion.

5. In assailing the impugned order appearing at Annexure-3, Dr. A.K. Mohapatra, learned Senior Advocate while re-agitating his objection in the Court below contended that the lower Court not only failed in appreciating the purport of Order 26, Rule 10 (A) of C.P.C but also failed in appreciating the fact situation available on record in arriving at such a decision. Dr. A.K. Mohapatra, learned Senior Advocate appearing for the petitioner further contended that in absence of any pleading, the application was not at all maintainable and consequently, requested for interference in the impugned order and setting aside the same.

6. In his opposition, Mr. P.K. Mohanty, learned Senior Advocate appearing for the contesting opposite parties while justifying the grounds taken by the petitioner in the application under Order 26, Rule 10 (A) contended that there existed sufficient pleading as well as evidence in support of the claim of his parties, and in drawing the attention of this Court to several portion of the plaint as well as the evidence further contended that there is no illegality in the impugned order.

Further in referring to some decisions, learned Senior Advocate appearing for the opposite party No.1 also contended that the impugned order is sustainable.

7. Heard learned Senior Counsels appearing for the parties. Before proceeding to analyse the fact position, it is necessary for this Court to first take into consideration the purpose of Order 26, Rule 10 (A) of C.P.C, which provision is quoted as herein below:

"10-A. Commission for scientific investigation - (1) Where any question arising in a suit involves any scientific investigation which cannot, in the opinion of the Court, be conveniently conducted before the Court, the Court may, if it thinks it necessary or expedient in the interests of justice so to do, issue a commission to such person as it thinks fit, directing him to enquire into such question and report thereon to the Court.

(2) The provisions of Rule 10 of this Order shall, as far as may be, apply in relation to a Commissioner appointed under this rule as they apply in relation to a Commissioner appointed under Rule 9.

From reading of the aforesaid provision, it appears that the provision authorizes a Court considering such application provided any question involved in the suit needs scientific investigation.

Coming to the factual scenario involved in the case, it appears that in filing an application under Order 26, Rule 10 (A), the opposite party Nos.1 has the following specific averments:

"2. That, the plaintiff has challenged the Will as forged and the signature of Natabar Das was forged.

3. That, in view of the Hon"ble Court's order the Will said to be executed by Natabar Das be sent to handwriting expert to examine if signature of Natabar Das in Will is genuine and if signature of Laxmidhar Mohapatra in compromise petition is genuine. The result of scientific examination will be helpful for just division of the case."

8. The present petitioner being the opposite party to the said petition had the following objection:

"4. That the contents of the petition that in view of the Hon"ble Court's order the said Will to be executed by Mahant Natabar Das be sent to handwriting expert to examine if signature of Natabar Das in WILL is genuine and if signature of Laxmidhar Mohapatra in compromise petition is genuine is false and denied. It is also false to state that the result of scientific examination will be helpful for just decision of the case. Without any pleading, the plaintiffs cannot be permitted to raise new facts and adduce evidence on those points.

5. That during course of examination in chief of the plaintiffs' witnesses as well as plaintiff No.1 (one) have not disputed the signature of Mahant Natabar Das in Exhibit-A(WILL). Moreover the plaintiffs have neither suggested the defendant

No.1's witnesses nor defendant No.1 (one) in cross examination that the signature of Mahant Natabar Das in Exhibit-A(WILL) is forged. That apart the plaint does not reveal/contain that any compromise was made in between the parties in respect of the suit property at any point of time, therefore the Exhibit-A(WILL) and compromise petition are not required to be examined by scientific expert. The plaintiffs have unnecessarily filed the petition with an ill intention only to delay the proceeding of the case and harass the defendant.

In such circumstances the petition is liable to be dismissed."

Now looking to the averments, counter objection as well as the provision of law made under Order 26, Rule 10A of C.P.C., it is necessary to examine from the pleadings of the plaintiff in the Court below particularly, as to whether there is at all any question involving the genuineness in the signature of the two persons named therein. Looking to the pleadings quoted herein above and the prayer made therein, it appears that the claim in petition under Order 26, Rule 10A of C.P.C. rests only on the examination of the signature of Mahanta Natabar Das in the Will and the signature of Laxmidhar Mohapatra in the compromise petition.

9. This petition has been placed along with W.P. (C) No. 14977 of 2013 already disposed of by this Court, as a reference shake. From the said record, this Court finds that the plaint involved in the case is available at page 21 of the brief. This Court also finds a copy of plaint being attached with the written note of submissions of the opposite party No.1. From reading of the plaint averments, this Court finds that the plaint contains the following pleadings. During course of argument Mr. P.K. Mohanty, learned Senior Advocate appearing for the contesting opposite parties drew my attention in this regard to paragraph No.7 of the plaint of W.P.(C) No.14977 of 2013 which is quoted hereunder :

"7. That the deceased Mahanta Natabar Das had become very old at the time of his death. Nearly four years prior to his death on 27.04.89 (Twenty seventh day of April, eighty nine) his hands were shaking and his eye sights became defective. He was thus suffering from ailments like Attacksia or some what like Parkinsons disease. He as neither able to write or read anything. Forth aforesaid old age, ailments he always needed helping hands to carry out normal pursuits of life. Since he as unable to write anything prior to four years of his death it cannot be believed that the alleged WILL was executed by him or that he has signed the same after knowing its contents. The so-called attesting witnesses and the scribe are all henchmen of defendant No.1 (one) and therefore they have supported the cock and bull story of execution and attestation of the WILL in question. Neither the defendant No.-1(one) nor his so called witnesses and the scribe being ever connected with Kabir Choura Math or it's the then Mahanta were not in a position to know the details of the estate of the deceased except Puri Town property which TOM Dieny and Harry of the street can say. Therefore the story of execution and attestation of the WILL is out and out false. The alleged WILL is thus a forged, fabricated and manufactured scrap of paper. Nor the Kabir Panthies, nor the plaintiff No.1 (two) nor Sri Sadguru Kabir Dharmadas Saheb

Vanshawali Pratinidhi Sabha know such Mahantaship of defendant No.-1 (one). The defendant no.-1 (one) never obtained any such "Mahanti Panja". It may be mentioned here that the plaintiff No.-1 (one) the successor of Mahanta Natabar Das, has got such "Mahanti Panja" from the Sabha. It may also be mentioned here that such "Panja" is renewed from time to time according to the resolution of the said Sabha.

From reading of the aforesaid pleadings, it is amply clear that as the opposite party No.1 was unable to write anything prior to four years of his death, it cannot be believed that the alleged Will is executed by him or that he has signed the same after knowing its contents. Reading of the aforesaid paragraph along with the entire pleading as available in the plaint, this Court observes that the entire endeavour of the opposite party No.1 was with regard to the genuineness of the Will and it nowhere carries any allegation with regard to the genuineness of the signature of Mahanta Natabar Das. This Court also nowhere finds any allegation with regard to challenge to the signature of the other person namely Laxmidhar Mohapatra in the Compromise Petition. In absence of any specific pleadings in the said regard, this Court finds that there is no application of the provision under Order 26, Rule 10A of C.P.C in the present circumstances.

10. Further from the evidence of the P.W.3 as produced by Mr. P.K. Mohanty, learned Senior Advocate appearing for the contesting opposite party and from reading of the examination in chief in paragraph No.3, this Court does not find any statement as to whether the signature belongs to Natabar Das or not, on the other hand, this Court finds that there is a specific statement made by P.W. 3 that the said Natabar Das has not signed in his presence and he has also not seen him in signing any Will. From reading of the pleading coupled with the statement made through the witness indicated herein above, this Court finds that the claim of the opposite party No.1 in the Court through the petition giving rise to the impugned order was beyond the scope of the suit and in such situation there is no scope for applying the provision contained in Order 26, Rule 10A of C.P.C.

Mr. P.K. Mohanty, learned Senior Advocate appearing for the contesting opposite parties has cited some decisions in support of his case, which are analysed as hereunder:

- (1) AIR 1987 ORISSA 7 a case in between Natabar Behera v. Batakrishna Das
- (2) AIR 1996 SUPREME COURT 1140 a case in between O. Bharathan v. K. Sudhakaran and another
- (3) AIR 2001 ORISSA 185 a case in between Bhagirati Sahu and others v. Akapati Bhaskar Patra
- (4) 106 (2008) CLT 721 a case in between Sri Raj Kishore Dash v. Sri Ramaniranjan Das.
- (5) 2015 (Suppl.-II) OLR-166 a case in between Ramaballahaba Mishra v.

Somanath Satpathy and others.

From perusal of the citation vide AIR 1987 ORISSA 7 a case in between Natabar Behera v. Batakrishna Das, this Court finds the said citation is not applicable to the present case for reason of difference in the fact situation. Similarly, from perusal of the citation vide AIR 1996 SUPREME COURT 1140 a case in between O. Bharathan v. K. Sudhakaran and another this Court finds that there is no involvement of Order 26, Rule 10A in this case at all, thus the same is not applicable to the present case. From perusal of the paragraph No.4 of the decision vide AIR 2001 ORISSA 185 a case in between Bhagirati Sahu and others v. Akapati Bhaskar Patra this Court finds that there existed an allegation on the genuineness of the signature of the defendant No.1 therein and the Court was considering the case on such specific allegation being available. As observed by this Court herein above, the case at hand did not have any allegation with regard to the genuineness in the signature of the particular parties. Therefore, the decision is not applicable to the present case. From perusal of the decision vide 106 (2008) CLT 721 a case in between Sri Raj Kishore Dash v. Sri Ramaniranjan Das this Court finds that this case also was considered with the facts existing, challenging the signature of a particular party on a particular document and requiring an expert report. So far as the decision vide 2015 (Suppl.-II) OLR-166 a case in between Ramaballahaba Mishra v. Somanath Satpathy and others is concerned, this Court finds that existence of the allegation on genuineness with the signature of particular persons, for which this Court finds that the said decision is not applicable to the present case.

11. Considering the contentions of the parties, considering the citations shown by the opposite parties and looking to the provisions contained in Order 26, Rule 10A of C.P.C, this Court is of the opinion that the lower Appellate Court has failed in appreciating the facts available in the case in applying the provision contained in Order 26, Rule 10A of C.P.C. Therefore, this Court finds that the impugned order so far it relates to allowing the application under Order 26, Rule 10A of C.P.C. is erroneous being contrary to Law and the said part of the order is hereby set-aside.

12. The Civil Miscellaneous Petition stands allowed but, however, there is no order as to cost.