
(2007) 07 PAT CK 0038
In the Patna High Court
Case No : C.R. No. 868 of 2004

Mohammad Jahangir @ Mohamad Jahagir Alam APPELLANT
Vs
Sajda Khatoon and Others RESPONDENT

Date of Decision : 11-07-2007

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 18 Rule 1

Citation : (2007) 4 PLJR 100

Hon'ble Judges : Navaniti Pd. Singh, J

Bench : Single Bench

Judgement

Navaniti Pd. Singh, J.—The plaintiff is the petitioner against an order by which plaintiff's application in terms of Order XVIII Rule 1 of CPC for a direction to the defendants to begin the case has been refused. Heard the learned counsel for the plaintiff-petitioner. The matter arises out of a Partition Suit. The plaintiff claims certain properties to be ancestral properties which had not been subject matter of partition earlier and sought partition. The defendants in the written statement challenged the facts in the pleadings. They asserted that there had been a previous family partition and, as such, the properties were not unpartitioned ancestral properties. They denied the right of the plaintiff to seek partition in respect of all the properties.

2. At this stage, the plaintiff filed an application in terms of Order XVIII Rule 1 of CPC which is reproduced as under:-

Right to begin.—The plaintiff has the right to begin unless the defendant admits the facts alleged by the plaintiff and contends that either in point of law or on some additional facts alleged by the defendant the plaintiff is not entitled to any part of the relief which he seeks, in which case the defendant has the right to begin.

3. On behalf of plaintiff-petitioner, it is submitted that as the defendants had pleaded to non-suit the petitioner, the defendants must begin. In my view, the

view, as canvassed with reference to Order XVIII Rule 1, is misconceived.

4. The general rule as to plead and prove is that one who pleads must prove. The exception being where the pleading of one is admitted by the adversary. In such an event, the person pleading the fact is relieved of his obligation to prove the pleading as it is admitted. The rationale of Order XVIII Rule 1 is based on these two principles put together. It is to be seen that once the defendant admits the facts as pleaded by the plaintiff then the plaintiff is relieved of proving his case. The obligation would then normally travel to the defendant to plead his case first. The requirement of Order XVIII Rule 1 is first that there should be an admission of facts by the defendant as pleaded by the plaintiff which facts in spite of admission would not entitle the plaintiff to any relief or would disentitle the plaintiff to any relief on a separate set of facts pleaded by the defendant. Primarily, there has to be first admission of facts by defendant. Secondly, it would be seen that this provision only gives a right to the defendant to begin whether he exercises that right or not the option is his. If Order XVIII Rule 1 made it obligatory on part of the defendant to begin then the section would be worded otherwise. The section is only conferring a right on the defendant but does not make it obligatory, for if it was to operate as an obligatory responsibility then it can simply be drafted as "defendant shall proceed" and not "that the defendant has the right to begin". The words would be "that the defendant had the duty to begin".

5. In the present facts, it would be seen that the defendants have made no admission to the pleadings of the plaintiff. Defendants have disputed the factum of the properties being unpartitioned ancestral properties, therefore, the plaintiff has to begin. In view of the aforesaid, I find no infirmity in the impugned order and this revision is, thus, liable to be and is dismissed. However, before parting, I would like to clarify that while dealing with the issue as raised by the plaintiff-petitioner, the trial Court appears to have exceeded in its jurisdiction in virtually deciding the pleadings itself. At this stage, there was no requirement to decide the correctness or otherwise of the pleadings, for that is to be decided in course of trial by evidences to be led by the parties. I, therefore, hold that any observation made by the trial Court in the order impugned touching upon any question of fact and/or right and liability of a party would not be taken to be a finding for the purposes of the suit.