
(1984) 02 OHC CK 0013
In the Orissa High Court
Case No : Misc. Appeal No. 450 of 1983

Narada Moharana

APPELLANT

Vs

Pramila Kumari Dei

RESPONDENT

Date of Decision : 01-02-1984

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 40 Rule 1, Order 40 Rule 2

Citation : AIR 1985 Ori 221

Hon'ble Judges : P.C. Misra, J

Bench : Single Bench

Advocate : B. Patnaik and Dhuliram Patnaik, for the Appellant; S. Kr. Dey, Y. Mohanty and S. Swain, for the Respondent

Final Decision : Dismissed

Judgement

P.C. Misra, J.—The plaintiff-appellant in the lower appellate court is the appellant against an order dated 13-12-1983 passed in Misc. Case No. 155 of 1983 by the Subordinate Judge of Jagatsinghpur.

2. The appellant had filed the suit for declaration of his title to the suit property and alternatively, for a preliminary decree declaring his 50% interest therein. It was also prayed for a declaration that the sale deed dated 25-10-1952 was illegal on the grounds stated in the plaint. He also prayed for confirmation of possession and alternatively, for recovery of possession of the suit property. There was a proceeding u/s 145 of the Criminal P. C. in which a receiver was appointed in respect of the suit property. Subsequently the said receiver continued during the pendency of the suit. The suit was disposed of by judgment dated 6-5-1983 in which the suit was dismissed on contest. The plaintiff thereafter filed an appeal against the said judgment and also filed an application in the lower appellate court with a prayer for continuance of the receiver. The learned Subordinate Judge who was moved to pass an ex parte order before appearance of the respondent directed by his order dated 7-7-1983 that the receiver should continue until further orders of the Court. The respondent after appearing in the

appeal filed an objection that the receiver who was continuing during the pendency of the suit had since been discharged by order dated 21-6-1983, i.e. much prior to the filing of the appeal in the lower appellate court, and, therefore, the prayer for continuance of the said receiver had become infructuous. It was also stated in the objection that the allegations made in the application for continuance of the receiver did not make out a case under Order 40, Rules 1 and 2 of the Civil P. C. for which no receiver could be appointed. The learned Subordinate Judge after hearing both the parties has come to the conclusion that there was no justification for appointment of a receiver as no grounds had been made out for an order in that behalf. The learned Subordinate Judge also found that the receiver had been discharged by order dated 21-6-1983 and consequently, the respondent before him had taken over possession of the suit property. It is against this order of the learned Subordinate Judge that the present appeal has been filed.

3. The trial court while disposing of the suit recorded clear findings that the suit property was not the joint family property of Gatei and Nitei and that it exclusively belonged to Gangadhar through whom the defendant inherited the suit property. On another issue framed on the question of adverse possession, the trial court also negatived the plea of the plaintiff that he was in possession of the suit property. Without commenting upon the correctness or otherwise of the said findings which would be decided in the appeal itself, it is not possible to take a different view for the present. In the application filed before the lower appellate court the appellant merely stated that the opposite parties (meaning the respondent and her husband) are trying to forcibly possess the property and appropriate the crops and cause damages to the property. The possession of the defendant was found in the judgment of the trial court. The receiver was discharged by orders of the court after disposal of the suit. Therefore, the question of defendant's taking forcible possession would not arise inasmuch as the finding of possession was in favour of the defendant. Nothing has been shown that any of the ingredients justifying appointment of a receiver exists after the disposal of the suit. The application of the appellant does not spell out any allegation of scramble for possession. The bald statement that the defendant-responder would cause damage to the property would not be enough for the purpose.

4. Under these circumstances, I am unable to agree with the contention of the learned counsel for the appellant that it is just and convenient to appoint a receiver during the pendency of the appeal in the lower appellate court. The appeal is accordingly dismissed. There would, however, be no order for costs.