

(2005) 09 OHC CK 0041

In the Orissa High Court

Case No : Writ Petition (C) No. 8225 of 2005

Narasingha Charan Ray

APPELLANT

Vs

Radhagobinda Deb Bije Markandeswar Sahi and Others

RESPONDENT

Date of Decision : 16-09-2005

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 17, Order 21 Rule 58, Order 6 Rule 17, Order 9 Rule 9, 115

Citation : (2005) 100 CLT 700 : (2005) 2 OLR 523

Hon'ble Judges : L. Mohapatra, J

Bench : Single Bench

Advocate : Susanta Kumar Dash, S.K. Mishra, S. Dash, S. Dash, K.K. Dash, S. Patra and A. Dhalasamanta, for the Appellant; A.C. Swain, R.B. Mishra, N. Mohapatra and S. Dash, for the Respondent

Final Decision : Allowed

Judgement

L. Mohapatra, J.—The judgment-debtor is the petitioner before this Court challenging the legality of the order dated 11.4.2005 passed by the learned Additional Civil Judge (Senior Division), Puri in C.M.A. No. 12 of 2004 rejecting the prayer for amendment of the petition filed by the petitioner u/s 47 of the Code of Civil Procedure.

2. The case of the petitioner before the Executing Court is that due to typographical error some lines have been omitted in the petition filed u/s 47 C.P.C. and that the said lines are required to be incorporated by way of amendment. The further stand of the petitioner is that in view of the grounds taken by the decree-holders-opposite parties, the petition filed u/s 47 needs amendment for addition of certain new facts, which can be considered under the scope of the execution proceeding.

3. The decree-holders-opposite parties filed objection stating that amendment, if allowed, would change the nature and character of the Execution Proceeding. It was also the stand of the decree-holders-opposite parties that if the proposed

amendment is for clarifying certain facts, which are already on record, the same is not necessary and, therefore, should not be allowed. Apart from the above, a legal objection was taken to the effect that there is no power left with the Executing Court to allow the petition filed for amendment of the petition u/s 47 of the C.P.C.

4. The learned Executing Court while dismissing the application observed that the judgment-debtor-petitioner, by way of amendment wanted to add some new facts, which would change the nature and character of the Execution Case.

5. At the time of hearing of this case, the learned counsel for the decree-holders-opposite parties raised a preliminary objection regarding maintainability of the petition filed under Order 6, Rule 17 C.P.C. before the Executing Court on the ground that such provision is not applicable to the execution proceeding in view of Section 141 of the C.P.C. The learned counsel relied on a decision of this Court in the case of Labany Mohankudo and Ors. V. Municipal Council, Parlakhemundi and Ors. reported in 1975(2) C.W.R.1071. In the aforesaid decision, this Court referring to several decisions held that Section 141 is not applicable to proceedings in Execution Case. Hence, Order 9, Rule 9, CPC is not applicable to a proceeding under Order 21, Rule 58 C.P.C.

6. The learned counsel for the petitioner on the other hand, relied on a decision of this Court in the case of Dolagobinda Sahu Vs. Chakradhar Mohapatra and Others, wherein this Court held as follows :-

"On a review of the authorities referred to above, we are of opinion that the Court has power apart from the provisions of Order 21, Rule 17, C.P.C. to amend an execution petition by addition of fresh properties to the list of properties appended to the original execution petition provided the petition for amendment is filed before the expiry of the period of the 12 year limitation prescribed by Section 48, C.P.C."

7. The learned counsel also relied on a decision of this Court in the case of Bhimaraj Onkarmal Firm and Anr. v. Satyanarayan Satpathy and Ors. reported in Volume 36 (1970) C.L.T. 1152. In the said decision, this Court also held that in exercise of power u/s 115 C.P.C. this Court should interfere with an order rejecting a petition filed for amendment of the cause title of the execution petition in order to do substantial justice. In the case of Bijoy Kumar Ash and Ors. v. Smt. Bhagabati Dei reported in 1971 (2) C.W.R. 507 this Court held that though provisions of Order 9 do not apply to execution proceedings, in exercise of inherent jurisdiction u/s 151 of the CPC an Execution Case can be restored when dismissed for default. In the case of State of Orissa v. Brajeswari Dibya and Ors. reported in 54 (1982) C.L.T. 165 this Court also held that in exercise of inherent power u/s 151 C.P.C. an Execution Case could be restored.

8. On analysis of all the above decisions, it would appear that this Court in the case of Labany Mohankudo and Ors. V. Municipal Council, Parlakhemundi and Ors. (supra) while deciding that Section 141 has no application to execution

proceedings and accordingly Order 9, Rule 9 C.P.C. has also no application, did not consider the Division Bench decision of this Court in the case of Dolagobinda Sahu V. Chakradhar Mohapatra and Ors. (supra). The other decisions wherein it was held that in order to do substantial justice, this Court can exercise the power u/s 151 C.P.C. have also not been taken into consideration. Therefore, on analysis of the above decisions, I am of the view that even though Section 141 C.P.C. has no application to execution proceedings, this Court can exercise its inherent jurisdiction u/s 151 C.P.C. for doing substantial justice to the parties. In the present case the learned Executing Court has dismissed the petition solely on the ground that the judgment-debtor wants to add some new facts, which would change the nature and character of the Execution Case. There is no discussion as to how the proposed amendment would change the nature and character of the Execution Case and without assigning any reason in this regard the petition having been rejected, I am of the view that the matter should be remitted back to the Executing Court for fresh disposal according to law.

9. I accordingly set aside the impugned order and direct the Executing Court to hear the petition for amendment filed under Order 6, Rule 17 C.P.C. afresh keeping in mind the decisions referred to in this judgment and dispose of the petition by assigning reasons.

The writ application is accordingly allowed.