

(1989) 07 OHC CK 0010
In the Orissa High Court
Case No : Civil Revision No. 671 of 1986

Parikhit Bhoi and Others

APPELLANT

Vs

Mangulu Bhoi and Another

RESPONDENT

Date of Decision : 13-07-1989

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 6 Rule 2, Order 6 Rule 4, Order 6 Rule 5

Citation : (1990) 1 OLR 17

Hon'ble Judges : H.L. Agarawal, C.J

Bench : Single Bench

Advocate : J.P. Misha, for the Appellant; R.K. Mohapatra, for the Respondent

Final Decision : Allowed

Judgement

H.L. Agarawal, C.J.—The question falling for consideration in this revision at the instance of the Defendants is the scope of Rule 5 of Order 6 of the Code of Civil Procedure. The aforesaid rule empowers the Court to call upon a party to give further and better statement of the nature of the claim or defence, or further and better particulars or any matter stated in any pleading, on such terms, as to costs and otherwise, as it thinks proper.

2. By the suit, the Plaintiff has prayed for permanent injunction against the Defendants on the assertion that he was in possession of schedule-A properties of the plaint which fell to his share in the partition between him and the Defendants. The Defendants in the written statement denied the aforesaid assertion of the Plaintiff. On the other hand, they pleaded that the parties were in possession of different portions of the ancestral properties for the sake of convenience only. In other words, they challenge the Plaintiff's case of partition by metes and bounds. However, they did not specify the properties which the respective parties are in possession of.

3. It is in this situation that an application was filed by the Plaintiff under Order 6, Rule 5, CPC to direct the Defendants to furnish better particulars of the lands

said to be in possession of the Plaintiff. The learned Munsif in the impugned order, came to hold that in view of the specific plea in the written statement that for the sake of convenience, some portions of the ancestral properties are in possession of the Plaintiff and some portions in possession of the Defendants, they were bound to furnish particulars or details of the properties in possession of the respective parties, particularly when the claim of the Plaintiff is that he is in possession of the suit properties since 1970.

4. It is submitted on behalf of the Petitioners that the trial Court has committed a serious error in exercising the jurisdiction vested in it within the meaning of Order 6, Rule 5, CPC inasmuch as the nature of the defence has no bearing upon the particulars of the parcels of land in possession of the respective parties. The aforesaid statement has been made by the Defendants only to falsify the claim of the Plaintiff that there was a partition by metes and bounds. The suit not being one for recovery of possession or declaration of title with respect to any specific land, the mougnd order is wholly irrelevant and beyond the scope of inquiry in the suit.

5. I find substance in the submission made on behalf of the Petitioners. Under Order 6, Rule 2, Code of Civil Procedure, every pleading has to state material facts, and under Rule 4, necessary particulars are to be given in all cases, which may help the Court ascertain the area of dispute to be decided.

6. In view of the pleading of the parties in this case, the material question that falls for consideration is as to whether there was a previous partition by metes and bounds or whether for the sake of convenience the parties are in possession of different portions of the ancestral properties. In other words, the scope of inquiry would be only with respect to the nature of possession of the parties and not the specific parcels of land which are in their possession. The trial Court has, therefore, committed an apparent error of law in appreciating the scope and ambit of Rule 5 of Order 6, Code of Civil Procedure., and under an erroneous impression has passed the impugned order giving direction to the Petitioners to furnish particulars of those lands. Thus, he has exercised a jurisdiction not vested in him in law.

7. The revision is accordingly allowed and the impugned order is hereby set aside. No costs.

Revision allowed.