
(2006) 08 OHC CK 0046
In the Orissa High Court
Case No : S.A. No. 20 of 1988

Rabinarayan Naik and Another

APPELLANT

Vs

Suren Kumar Satpathy (dead) and Others

RESPONDENT

Date of Decision : 09-08-2006

Acts Referred:

Citation : (2006) 2 OLR 523

Hon'ble Judges : A.K. Parichha, J

Bench : Single Bench

Advocate : S. Mishra, on behalf of N.C. Pati, for the Appellant; M.M. Sahu, for the Respondent

Judgement

A.K. Parichha, J.—The present respondents as plaintiffs filed T.S.No. 45 of 1984 in the Court of learned Sub-ordinate Judge, Dhenkanal for declaration of title and confirmation of possession over the suit property and also permanent injunction against the present appellant-defendants. That suit was decreed and the present appellants carried appeal, vide Title Appeal No. 27 of 1985 before the learned District Judge, Dhenkanal. The said Court having confirmed the decree of the trial Court, the present appeal has been preferred. During pendency of this appeal, Respondent Nos. 1 and 3 died, but their legal heirs were not brought on record for which the appeal abated against those respondents. At this juncture, a question came up for consideration as to whether the present appeal would abate as a whole or continue against the remaining respondents.

2. Mr. Sahoo, learned Counsel appearing for the respondents submits that the decree passed by the Courts below being inseparable for all the respondents, abatement of the appeal against some of them would entail abatement of the appeal as a whole. Mr. Mishra, learned Counsel appearing for the appellants on the other hand contends that the appeal can continue against the remaining respondents, as question of law only is to be decided in the Second Appeal.

3. The answer to the above noted question has already been provided in the

cases of Banamali Raiguru v. Bhabani Shankar Mishra and Ors. 76 (1993) CLT4; Jayadev Tripathy @ Panda Vs. Dilip Kumar Panda and Others, ; and The State of Punjab Vs. Nathu Ram, . While deciding similar issue in the above noted cases, the Courts have expressed uniform opinion that where the decree already passed by the Courts below is indivisible for all the respondents, then dismissal of the appeal against one of them would entail in dismissal of the entire appeal as otherwise, it would lead to conflicting judgments. This view being universal and in consonance with equitable judicial norm can safely be adopted. In the present case, the decree has been passed in favour of all the respondents jointly and the decree being indivisible in nature, abatement of the appeal against respondent Nos. 1 and 3 would entail abatement of the entire appeal.

4. In the aforementioned situation, the present appeal abates as a whole, but in peculiar circumstances of the case without any cost.