

(2010) 06 OHC CK 0037

In the Orissa High Court

Raghunath Sahoo and Others

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 23-06-2010

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 10, Order 1 Rule 10(2), Order 1 Rule 8

Citation : (2010) 4 CivCC 387 : (2010) 110 CLT 249 : (2010) 2 ILR (Ori) 767 : (2010) 2 OLR 152 : (2011) 1 RCR(Civil) 767 : (2011) 1 RCR(Civil) 767

Hon'ble Judges : R.N. Biswal, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

R.N. Biswal, J.—The Petitioners call in question the Order Dated 17.4.2001 passed by the Addl. District Judge, Khurda in Civil Revision No. 6 of 2000 dismissing the revision & confirming the Order Dated. 20.4.2000 passed by the Learned Civil Judge (Sr.Division) Khurda in T.S. No. 113 of 1999.

2. Opp. Party No. 2 as Plaintiff filed T.S. No. 113 of 1999 before the Court of Learned Civil Judge (Sr. Division) Khurda for declaration of his right, title & interest over the suit properties as described in Schedule A, Band C of the plaint, confirmation of possession of Schedule B and C properties & eviction of Opp. Party No. 3 (Defendant No. 1) from Schedule A property & recovery of Rs.17,500 from her along with damage " Rs.50 per day & for permanent injunction.

3. As per the case of Opp. Party No. 2 he let out the house standing over A schedule property in favour of Opp. Party No. 3 & one Snehalata Samantaray on a monthly rent of Rs.1000. As they defaulted in making payment of rent. Opp. Party No. 2 issued notice for their eviction. On receipt of the notice, Snehalata Samantaray vacated the house, but Opp. Party No. 3 continued to occupy it. So far as B schedule property is concerned, the case of Opp. Party No. 2 is that it situates in front of Jugal Charan Girls" Vidyapitha. After issue of eviction notice Opp. Party No. 3 along with some others tried to amalgamate the said property

with the school premises & gathered building materials for construction of boundary wall by encroaching upon it. As regards Schedule C property, it is the case of Opp. Party No. 2 that he is the founder of the aforesaid school & donated land in its favour through a registered gift deed, but C schedule land was inadvertently included in the said gift deed, even though he did not actually intend to donate it. Possession of the said land was not delivered to the school. Taking advantage of inadvertent inclusion of C schedule property in the gift deed, Opp. Party No. 3 tried to take forcibly possession of the same. Hence, Opp. Party No. 2 filed the aforesaid suit. During pendency of the suit, the Petitioners, all of whom reside under Balugaon NAC filed two separate petitions - one under Order 1 Rule 8 & the other under Order 1 Rule 10 C.P.C. before the Trial Court to permit them to represent the general public of Balugaon N.A.C. & to add them as parties in the suit.

4. As per their case, the suit properties belongs to the school, which is a public institution, where girl students of Balugaon NAC are prosecuting their study & as such the general public of Balugaon NAC have direct interest on the subject matter of the suit. The Trial Court rejected both the petitions holding that the Petitioners therein were neither necessary nor property parties & that the school being a Govt. School, the matter remained confined between Opp. Party No. 2 & the Govt. including the School authorities vide Order Dated 20.4.2000, as stated earlier.

5. Being aggrieved with the said order, the Petitioners preferred Civil Revision No. 6 of 2000 before Learned Addl. District Judge, Khurda, who dismissed the revision & confirmed the order of the Trial Court. Being aggrieved with the said orders the Petitioners have preferred the present Writ Petition.

6. Learned Counsel for the Petitioners submitted that the school situates in Balugaon & at present about 100 girl students of different locality under Balugaon NAC are prosecuting their study there. Some of the Petitioners were ex-members of the Managing Committee of the School before it was handed over to the Government & the others are guardians of the students. So, they have direct interest on the subject matter of the suit. In support of his submission, he relied on the decisions Damodar Mohapatra and Anr. v. State of Orissa and Ors. 34 (1968) CLT 956, Gopal Krushna Badu Mohapatra and Others Vs. Girish Chandra Nayak and Others, , Anil Kumar Agrawal Vs. Mohanlal Jain and Others, , Ashok Kumar Bharat Kar v. Jogeswar Bharat Kar and Ors. 2007 (Supp. II) OLR 1049 & Sk. Siraj and Others Vs. Nilamani Mohapatra and Others, On the other hand, Learned Counsel for the Opp. Parties contended that admittedly the school is a Govt. School. The headmistress of the school as well as the State of Orissa being represented by the Collector, Khurda & the Circle Inspector of Schools, Khurda Education Circle have been arrayed as Defendants in that suit. They are competent enough to safe-guard the interest of the School. Since the Petitioners have no interest in the suit & they are neither necessary nor proper parties, both the Courts below have rightly turned down their prayer.

7. In the decision Damodar Mohapatra and Anr. (supra) the main issue between the Plaintiff & Defendant therein was whether the suit land was the land of the Plaintiffs with occupancy right or was a communal & Gochar land. Opp. Party Nos. 7 & 8 on behalf of the villagers, contended that it was communal & Gochar land. So, this Court held that they had direct interest in the subject-matter of the suit involved between the parties & directed that the interveners should be impleaded as parties. In the decision Gopal Krushna Badu Mohapatra and Ors. (supra) the Plaintiffs claimed to be Marfatdars of property of a temple on the basis of a registered "Seva Samarparna Patra" which was subsequently cancelled. Another "Seva Samarparna Patra" was executed in favour of the Petitioners. They filed a petition under Order 1 Rule 10(2) of C.P.C. to add them as parties, but the Trial Court rejected their petition & it was confirmed by the Revisional Court. In a Writ Petition this Court set aside the orders of the Trial Court as well as the Revisional Court & allowed the petition under Order 1, Rule 10(2) of C.P.C. In the decision Anil Kumar Agrawal (supra) Ram Chandra Jain, the original Plaintiff filed a suit for recovery of the disputed house as described in the plaint by electing the Defendant Hanuman Prasad Agarwal there from. While the suit was being heard, the Petitioner filed a petition under Order 1, Rule 10(2) of C.P.C. with a prayer to implead him as Defendant No. 2 in the suit. As per his case, his father Radhesyam Agarwal was partner in a partnership firm along with Hanuman Prasad Agrawal, Ramchandra Jain, the original Plaintiff negotiated with Hanuman prasad Agrawal & Radhesyam Agrawal for sale of the suit property for a consideration of 10,000 & received a part of the consideration money. So, the father of the Petitioner & after his death the Petitioner was in possession of the suit property. Plaintiff repudiated the stand of the Petitioner in his objection. The Trial Court rejected the petition which was confirmed by the Revisional Court. This Court did not find any infirmity in the conclusion arrived at by the Courts below & dismissed the Writ Petition. In the decision Ashok Kumar Bharat Kar (supra), the Petitioner therein as Plaintiff filed a suit praying for a declaration that the recording of the suit land in favour of Defendant No. 2 along with Plaintiff & Defendant No. 1 was illegal & for partition of the suit land & allotment of half share each in favour of the Plaintiff & Defendant No. 1. Defendant No. 2 was no other than the brother of the Plaintiff & Defendant No. 1. According to the Plaintiff, out of the money which was given by his maternal uncle on the "Arnprasanna Day", the disputed property was purchased through a registered sale deed in the name of the Plaintiff & Defendant No. 1, but inadvertently the same was recorded in the name of all the three brothers viz. the Plaintiff, Defendant No. 1 & Defendant No. 2 So, such recording should be corrected. On the other hand It was the case of Defendant No. 2 that his father purchased the said property out of his own income, but lest his brothers would claim any share therein, he got it registered in the name of Plaintiff & Defendant No. 1. While the suit was pending, father of the parties filed a petition under Order 1, Rule 10(2) of C.P.C. to implead him as a party. So, this Court held that since the Plaintiff in the suit claimed that the disputed land was purchased from out of the money given on his "Arnprasanna Day" & the Defendant No. 2 claimed that their father

purchased the same out of his own income, the father should be added as a party. In the decision *Sk. Siraj and Ors.*(supra) the pendent lite transferees were allowed to be added as party. So, in the considered opinion of this Court none of the decisions cited above is applicable to the present case.

8. Law is well settled that Plaintiff is the dominus litis. He is to choose the Defendants. But as per Order 1, Rule 10(2) of C.P.C. the Court has power to direct for addition of a person, if such person is a necessary Of property party. A person is a necessary party if in his absence no effective decree can be passed. He is a proper party if his presence is necessary for an effectual & complete adjudication of the suit. In the present case admittedly the school in question is a Government School. The State of Orissa, through its Secretary in the Department of School & Mass Education, the Headmistress of the School, The Circle Inspector of School, Khurda & the Collector-cum-District Magistrate, Khurda have been arrayed as parties. They are competent enough to protect the interest of the school. Only because some of the Petitioners were ex-members of the Managing Committee of the School before it was handed over to the Government & the others are the guardians of the girl students reading in the school, it can not be said that they are interested in the dispute. So, this Court is of the view that the Petitioners are neither necessary nor proper parties to the suit.

Accordingly, the Writ Petition stands dismissed. No cost.