

(2015) 08 OHC CK 0004
In the Orissa High Court
Case No : WP (C) No. 9902 of 2008

Rajat Kumar Mohanty and Others

APPELLANT

Vs

Sarat Chandra Panda and Others

RESPONDENT

Date of Decision : 26-08-2015

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 6 Rule 17
Constitution of India, 1950 — Article 227

Citation : (2015) 2 ILR Ori 767

Hon'ble Judges : Akshaya Kumar Rath, J.

Bench : Single Bench

Advocate : Prashanta Kumar Mohanty, for the Appellant; Soumya Mishra for S.P. Mishra, Senior Advocate, for the Respondent

Final Decision : Allowed

Judgement

Dr. Akshaya Kumar Rath, J.—By this petition under Article 227 of the Constitution of India, challenge is made to the order dated 27.6.2008 passed by the learned Civil Judge (Junior Division), Baripada in T.S. No. 196 of 2001, vide Annexure-7, whereby and whereunder the application for amendment of the plaint was rejected. The petitioners as plaintiffs filed the suit for declaration of right, title and interest; for eviction of the defendants from the suit land through process of court and for delivery of possession of the land in the court of the learned Civil Judge (Junior Division), Baripada, which is registered as T.S. No. 196 of 2001. The foundation of the claim of the plaintiffs is that the suit land was an ancestral joint family properties and the same was divided under registered partition deed bearing No. 211 between the co-owners. The rightful owner had transferred the land in favour of the plaintiffs and one Rabindra Mohanty under a registered gift deed. The gift has been acted upon and the plaintiffs are in possession of the property as absolute owners thereof. They have constructed a residential house over a portion of the suit land. Further plank of claim of the plaintiffs is that they could not produce the gift deed before the settlement proceeding since they were residing at separate places, as a result of which a portion of the land conveyed

under the gift deed was recorded in the name of Narayan Prasad Mohanty and the Government of Orissa. The defendants having no semblance of right, title and interest had encroached upon an area measuring Ac.0.03 dec. and managed to get the said land recorded in their favour in a mutation proceeding.

2. Pursuant to issuance of summons, the defendants entered appearance and filed written statement denying the assertions made in the plaint. The case of the defendants is that the disputed land measuring Ac.0.03 dec. had not been gifted in favour of the plaintiffs. They are in possession of the suit land peacefully, openly and continuously for more than the statutory period and, as such, they have perfected title by way of adverse possession.

3. While the matter stood thus, the plaintiffs filed an application for amendment of the plaint on 2.8.2007 to substitute paragraph-3 of the plaint by correctly describing the documents and the executants of the said documents and to add a sub-paragraph after paragraph-4 stating that recordings made in favour of Narayan Prasad Mohanty was without any basis since the land is covered under the gift deed.

4. By a laconic order dated 27.6.2008, vide Annexure-7, learned trial court rejected the application for amendment. The operative portion of the said order is quoted hereunder;

".....Perused the petition, case record and the objection petition and seen that the amendment petition is filed after 7 years on filing of the suit and if the proposed amendment will be allowed the nature and character of the suit will be changed. Heard. The prayer for amendment is rejected."

5. Heard Mr. Prashanta Kumar Mohanty, learned counsel for the petitioners and Mr. Soumya Mishra on behalf of Mr. S.P. Mishra, learned Senior Advocate for the opposite parties.

6. The seminal point that hinges for consideration of this Court is as to whether learned trial court is justified in rejecting the application for amendment since the same was filed after 7 years of institution of the suit. An ancillary point that crops up is as to whether the learned trial court is justified in rejecting the application for amendment without assigning any reason?

7. In *Revajeetu Builders and Developers Vs. Narayanaswamy and Sons and Others*, , on a survey of earlier decisions, the apex Court succinctly stated that the factors to be taken into consideration while dealing with the application for amendment. The apex Court in paragraph-63 of the report held as follows:

"63. On critically analyzing both the English and Indian cases, some basic principles emerge which ought to be taken into consideration while allowing or rejecting the application for amendment.

(1) whether the amendment sought is imperative for proper and effective adjudication of the case?

- (2) whether the application for amendment is bona fide or mala fide?
- (3) the amendment should not cause such prejudice to the other side which cannot be compensated adequately in terms of money;
- (4) refusing amendment would in fact lead to injustice or lead to multiple litigation;
- (5) whether the proposed amendment constitutionally or fundamentally changes the nature and character of the case; and
- (6) as a general rule, the court should decline amendments if a fresh suit on the amended claims would be barred by limitation on the date of application.

These are some of the important factors which may be kept in mind while dealing with application filed under Order 6 Rule 17 . These are only illustrative and not exhaustive."

8. In *Surender Kumar Sharma v. Makhan Singh*, 2009 AIR SCW 6131, the apex Court held that even if the prayer for amendment was a belated one, then also the question that needs to be decided is to see whether by allowing the amendment, the real controversy between the parties may be resolved. Under Order 6 Rule 17 of the CPC, wide powers and unfettered discretion have been conferred on the Court to allow amendment of the pleadings to a party in such a manner and on such terms as it appears to the Court just and proper. Even if, such an application for amendment of the plaint was filed belatedly, such belated amendment cannot be refused if it is found that for deciding the real controversy between the parties, it can be allowed on payment of costs. The Court must bear in favour of doing full and complete justice in the case where the party against whom the amendment is to be allowed, can be compensated by cost or otherwise.

9. Thus merely an application for amendment is filed belatedly, the same cannot be refused if it is necessary for deciding the real controversy between the parties. The court must bear in mind the principles as laid down in *Revajeetu Builders and Developers* (supra). The court has wide powers and unfettered discretion to allow amendment of pleadings in such manner and on such terms as it appears to the court just and proper.

10. The next question arises as to whether the impugned order stands the scrutiny of law since the same is a laconic one.

11. In *MMRDA Officers Association Kedarnath Rao Ghorpade Vs. Mumbai Metropolitan Regional Development Authority and Another*, , the apex Court in paragraph-5 of report held as follows:

"Even in respect of administrative orders Lord Denning, M. P. in *Breen Vrs. Amalgamated Engg. Union* reported in (1971) 1 All ER 1148 observed : (All ER p. 1154h). "The giving of reasons is one of the fundamentals of good administration." In *Alexander Machinery (Dudley) Ltd. v. Crabtree* reported in

1974 ICR 120 (NIRC) it was observed:

"Failure to give reasons amounts to denial of justice. Reasons are live links between the mind of the decision-taker to the controversy in question and the decision or conclusion arrived at."

Reasons substitute subjectivity by objectivity. The emphasis on recording reasons is that if the decision reveals the "inscrutable face of the sphinx," it can, by its silence, render it virtually impossible for the Courts to perform their appellate function or exercise the power of judicial review in adjudging the validity of the decision. Right to reason is an indispensable part of a sound judicial system. Another rationale is that the affected party can know why the decision has gone against him. One of the salutary requirements of natural justice is spelling out reasons for the order made, in other words, a speaking-out. The "inscrutable face of a sphinx" is ordinarily incongruous with a judicial or quasi-judicial performance. *Chairman and Managing Director, United Commercial Bank and Others Vs. P.C. Kakkar*, ."

12. The apex Court in *Kranti Associates Pvt. Ltd. and Another Vs. Sh. Masood Ahmed Khan and Others*, has summarized the principles, which are quoted hereunder:

"47. Summarizing the above discussion, this Court holds:

(a) In India the judicial trend has always been to record reasons, even in administrative decisions, if such decisions affect anyone prejudicially.

(b) A quasi-judicial authority must record reasons in support of its conclusions.

(c) Insistence on recording of reasons is meant to serve the wider principle of justice that justice must not only be done it must also appear to be done as well.

(d) Recording of reasons also operates as a valid restraint on any possible arbitrary exercise of judicial and quasi-judicial or even administrative power.

(e) Reasons reassure that discretion has been exercised by the decision-maker on relevant grounds and by disregarding extraneous considerations.

(f) Reasons have virtually become as indispensable a component of a decision-making process as observing principles of natural justice by judicial, quasi-judicial and even by administrative bodies.

(g) Reasons facilitate the process of judicial review by superior courts.

(h) The ongoing judicial trend in all countries committed to rule of law and constitutional governance is in favour of reasoned decisions based on relevant facts. This is virtually the lifeblood of judicial decision-making justifying the principle that reason is the soul of justice.

(i) Judicial or even quasi-judicial opinions these days can be as different as the judges and authorities who deliver them. All these decisions serve one common

purpose which is to demonstrate by reason that the relevant factors have been objectively considered. This is important for sustaining the litigants' faith in the justice delivery system.

(j) Insistence on reason is a requirement for both judicial accountability and transparency.

(k) If a Judge or a quasi-judicial authority is not candid enough about his/her decision-making process then it is impossible to know whether the person deciding is faithful to the doctrine of precedent or to principles of incrementalism.

(l) Reasons in support of decisions must be cogent, clear and succinct. A pretence of reasons or "rubber-stamp reasons" is not to be equated with a valid decision-making process.

(m) It cannot be doubted that transparency is the sine qua non of restraint on abuse of judicial powers. Transparency in decision making not only makes the judges and decision makers less prone to errors but also makes them subject to broader scrutiny. (See David Shapiro in Defence of Judicial Candor.)

(n) Since the requirement to record reasons emanates from the broad doctrine of fairness in decision making, the said requirement is now virtually a component of human rights and was considered part of Strasbourg Jurisprudence. See Ruiz Torija v. Spain EHRR, at 562 para 29 and Anya v. University of Oxford, wherein the Court referred to Article 6 of the European Convention of Human Rights which requires,

"adequate and intelligent reasons must be given for judicial decisions".

(o) In all common law jurisdictions judgments play a vital role in setting up precedents for the future. Therefore, for development of law, requirement of giving reasons for the decision is of the essence and is virtually a part of "due process".

Resultantly the impugned order dated 27.6.2008 passed by the learned Civil Judge (Junior Division), Baripada in T.S. No. 196 of 2001 is quashed. The matter is remitted back to the learned trial court to consider the application for amendment afresh. The petition is allowed.