
(1987) 03 OHC CK 0020
In the Orissa High Court
Case No : Civil Revision No. 529 of 1983

Rama and Others

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 24-03-1987

Acts Referred:

Citation : AIR 1987 Ori 192 : (1987) 63 CLT 621

Hon'ble Judges : R.C. Patnaik, J

Bench : Single Bench

Advocate : S. Misra, 1, J.M. Mohanty, R. Saha and S.K. Nayak, for the Appellant; Addl. Standing Counsel, for the Respondent

Final Decision : Allowed

Judgement

R.C. Patnaik, J.—A stream originating from the hills located near Hadichira in the district of Ganjam and winding its way by village Khamar and other villages merges in Chancharabandh located in Madhupadar village. In the beginning, the stream is known as "Nikitinala" and later as "Jamanala". The plaintiff-petitioners who are the residents of village Khamar have alleged that Jamanala since time immemorial has been the irrigation source of lands in several villages including the lands located in village Khamar. Thirty years back when the Rusikulya project was implemented, a pipe was fixed for flow of water from the canal to Jamanala to irrigate the land of the petitioners. It is averred that defendants 1,2 and 3 opposite parties intended to divert the water by erecting a small embankment and digging separate channel. If the defendants succeeded, the petitioners would lose the irrigation benefits and would be prejudicially affected. On the aforesaid averments, they instituted a suit in the court of the Munsif for injunction restraining the defendants from going upon the land for the purpose of diverting the water by construction of any obstruction and for a direction to the opposite parties to remove any construction that might have been made. The defendants controverted the allegations and pleaded lack of pecuniary jurisdiction of the court.

2. Trial was taken up. In the midst of the trial, an application was filed by the defendants under Order 14, Rule 2 of the CPC for hearing of the issue relating to pecuniary jurisdiction as a preliminary issue and the court having granted the prayer, hearing of the suit was taken on the preliminary issue.

3. It was contended that having regard to the allegations of the plaintiffs that their lands given in the schedule was being irrigated by the waters which flowed through pipe No. 6, obstruction to which flow was alleged, the suit in substance was one of declaration of title and consequential relief. It was essentially a suit for declaration of the plaintiffs' right of irrigation and for injunction restraining the defendants from diverting or obstructing the flow.

4. The trial court upheld the contentions as urged by the defendants and held that inasmuch as the value of the land as admitted by the plaintiffs was Rs. 35,000/-, the suit had been arbitrarily valued at Rs. 3,300/-. Hence, it held that it had no jurisdiction to try the suit and directed return of the plaint. The revision is directed against the said order.

5. It is now well established that in matters of court-fee and pecuniary jurisdiction, one must look to the real substance of the suit and not to the mere form in which it is clothed. Where the plaintiffs must seek a declaration, that is to say, where there is a legal necessity of seeking a declaration before he could get an injunction to protect it, the suit would come u/s 7(iv)(c) of the Court-fees Act even though there is no specific prayer for a declaration. The declaration shall be deemed to be embedded by way of averments in the body of the plaint. The safe working rule is that when there is some legal obstacle which has to be removed before a consequential relief can be granted, it is incumbent upon the plaintiffs to pray for a declaration which would help in removing the obstacle. But if the plaintiff merely avers a title which can be established without the cancellation of a document, or the nullification of any adverse title and claims only the relief which would naturally flow from the establishment of the title which he avers, it is not necessary for the plaintiffs to pray expressly for a declaration of the title.

6. The averments in the plaint give the history as to the existence and enjoyment of the irrigation rights and narrate the facts. The plaintiffs by evidence need only to prove their assertions. There is no legal impediment which is to be removed before the injunction protecting the right can be granted. On the proof of the assertions, the relief follows. So, whether the plaintiffs have or have not sued for declaration, it is not necessary for them to pay court-fee on the footing that the finding which they seek as to their title is really a declaration necessarily required as a preliminary to the grant of injunction. It, therefore, follows that the case comes within the purview of Section 7(iv)(d) of the Court-fees Act and not u/s 7(iv)(c). Therefore, value of the land which is benefited by the flow of water is not at all material. No exception, therefore, can be taken to the valuation of the suit nor can it be said to be arbitrary. In the facts and circumstances, I would accept the revision, and vacate the order of the court below. The court would now proceed to dispose of the suit in accordance with law

as expeditiously as possible, the suit being of the year 1980.

7. The revision is accordingly allowed. No costs.