

(1988) 06 OHC CK 0004

In the Orissa High Court

Case No : Civil Revision No. 640 of 1987

Sanat Kumar Pattanaik

APPELLANT

Vs

Biswadev Pattanaik and Others

RESPONDENT

Date of Decision : 29-06-1988

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 10
Limitation Act, 1963 — Section 21

Citation : (1988) 66 CLT 485

Hon'ble Judges : S.C. Mohapatra, J

Bench : Single Bench

Advocate : C.R. Nanda and S.K. Ghose, for the Appellant; J. Patnaik, S.K. Patnaik, H.M. Dhal for Parties 2, 3, 8 and 18, R. Ch. Mohanty, R.K. Mohanty for Parties 9, 10, 11, 12 and 13 and Addl. Standing Counsel for Parties 14, 15 and 16, for the Respondent

Final Decision : Allowed

Judgement

S.C. Mohapatra, J.—Plaintiff is the Petitioner in this Civil Revision.

2. Plaintiff filed suit for title and for partition of disputed "A" Schedule property in the plaint in the Court of Subordinate Judge, Bhawanipatna. After constitution of a Court at Nawapara the suit was transferred which was registered to that Court. Plaintiff added Parakhit Behera and Kesab Behera as Defendant Nos. 10 and 11 with other Defendants. When notice of the suit was taken. Process Server reported that Defendant Nos. 10 and 11 were dead. On enquiry by Plaintiff it was revealed that Parakhit and Kesab were dead prior to the filing of the suit. An application for amendment of the plaint was filed to add the legal representatives of the two deceased persons as parties to the suit. Before, such application for amendment of the plaint was disposed of, Plaintiff filed an application to treat the same to be one under Order 1, Rule 10 CPC for addition of parties. On the objection of Defendant Nos. 12 and 13, trial Court refused to add the legal representatives of Parakhit and Kesab as parties relying upon a decision of this

Court reported in *Cuttack Municipality Vs. Shyamsundar Behera*, , and also the decisions reported in *Jogindar Singh and Ors. v. Krishna Lal and Ors.* AIR 1977 Punj. 180, *Goverdhan Dass and Anr. v. Darshan Singh and Ors.* AIR 1969 Punj. 372 and *The State Trading Corporation of India Limited v. K. V. Vaidyalingam and Ors.* 1978 M.L.J. 345.

3. There is no dispute that Parakhit or Kesab were properly added as parties for proper adjudication. In case the legal representatives of those two persons would have been made Defendants when the suit was filed, there could have been no objection. In case Parakhit and Kesab would have died during pendency of the suit, there could have been no objection to add their legal representatives as parties even after condonation of delay and setting aside abatement in case sufficient cause would have been shown.

4. Short question therefore is: Whether the legal representatives of some of the persons who were wrongly added as Defendants though they were dead at the, time of filing of the suit, can be added as parties?

5. A suit envisages two parties. Those who seek the relief from the Court and initiate the litigation are Plaintiffs. Others are Defendants. Parties are to be persons whether juristic or individuals. There is no scope for a suit in the Civil Court without a Defendant. Thus, where the named Defendant is not a person or cannot defend, the same amounts to be a suit without a Defendant. A dead person comes within the said category. Suit against a dead man is a nullity. Addition of parties is possible only in a suit which has parties in existence. In that context the decision of this Court in *Cuttack Municipality v. Shyamsundar Behera*¹ (supra) is correct. The same is also the, principle in *M/s. Jayashree Chemicals Ltd., v. K. Venkatarotnam and Ors.* 40 (974) C.L.T. 1079.

6. The aforesaid principle would have no application where" there is a valid suit having two parties. Court's power under Order I, Rule 10, CPC can be exercised in such cases. Plaintiff who has committed the mistake has no right to add parties. It is the discretion of the Court which is to be judicially exercised. All mistakes are not penal in character. Thus, bona fides of the party in committing the mistake is to be considered, where the application for addition of party lacks bona fides of the party was grossly negligent,- Court would not be unjustified to refuse the delayed prayer for addition of party.

7. Addition of party is a procedure for effective disposal of a suit by proper adjudication by the Court. It has been observed by the Supreme Court in the decision reported in *The State of Gujarat Vs. Ramprakash P. Puri and Others*, , that procedure is the hand maid and not a mistress of law, intended to subserve and facilitate the cause of justice and not to govern or obstruct it. Thus, technicality would have no place and a Court should examine the question to assist a party in" default than penalising it for mistake. A general observation relating to duty of Court was made in the decision reported in *Srimati Sailabala Tripathy v. Bansidhar Misra and others*⁷, that Court has the duty to assist the

litigating parties in a fair way to have the lis before it duly constituted and cannot be a silent spectator, unconcerned with the development of the litigation before it. It was observed:

In pointing out a defect to a counsel, the Court is not partisan. It only discharges a duty so solemnly in him and the step taken by the Court is only in aid of dispensation of justice. It is not appropriate that a Court lies by and keeps quiet when it finds a remediable defect in the proceeding. On the other hand, it is its duty to bring the defect to the notice of counsel appearing in the matter so that the defect may be rectified in time.

8. There is no finding by the trial Court that the Plaintiff lacks bona fides or was grossly negligent. In such circumstance when effective adjudication requires the presence of the legal representatives of Parakhit and Kesab, they ought to have added as parties since their rejection of the petition amounts to material irregularity in exercise of jurisdiction and the order is vulnerable.

9. Mr. R. K. Mohanty the learned Counsel for the contesting Defendants submitted that Section 21 of the Limitation Act may be attracted in the suit. Trial Court is to consider the same since materials would be necessary for adjudication of the question.

10. In the result, the Civil Revision is allowed.

Impugned order is set aside. There shall be no order as to costs.