

(2017) 03 OHC CK 0009

In the Orissa High Court

Case No : 1249 of 2015

Saraswati Nayak and others

APPELLANT

Vs

Susen Nayak and another

RESPONDENT

Date of Decision : 15-03-2017

Acts Referred:

[Code of Civil Procedure, 1908](#), [Order 16 Rule 6](#)

Citation : (2017) 03 OHC CK 0009

Hon'ble Judges : A.K.Rath

Bench : SINGLE BENCH

Advocate : Padmaja Pattnaik, P.Swain

Judgement

1. This petition challenges the order dated 7.8.2015 passed by the learned Civil Judge (Sr.Division), Rairangpur in C.S.No.72 of 2013. By the said order, the learned trial court rejected the application of the plaintiffs to call for the original registered sale deed from the custody of one Balaram Naik son of Parmeswar Naik.

2. The petitioners as plaintiffs instituted the suit for declaration of "B" schedule land, confirmation of possession and in the alternative for recovery of possession in the event they are dispossessed during pendency of the suit and permanent injunction impleading the opposite parties as defendants. Pursuant to issuance of summons, the defendants entered appearance denying the assertions made in the plaint. While the matter stood thus, the plaintiffs filed an application under Order 16 Rule 6 C.P.C. to issue summon to one Balaram Naik for cause production of Registered Sale Deed no.1134 dated 8.4.1967. It is stated that they have filed a certified copy of the document along with other documents. The said document is relevant for just decision of the case. They are not in possession of the original document. The original document was in possession of Parmeswar Naik. He is dead. The same was objected to by the defendants. The learned trial court came to hold that the document has not been relied upon by

the plaintiffs. Though the certified copy of the document was filed in the court but the same is beyond pleadings. Held so, the learned trial court rejected the application.

3. Heard Mrs. Padmaja Pattnaik, learned Advocate for the petitioners and Mr.P.Swain, learned Advocate for the opposite parties.

4. Mrs.Pattnaik, learned Advocate for the petitioners submits that the original document was in possession of the vendee- Parmeswar Naik. He is dead. The document is vital one. The plaintiffs have filed a certified copy of the same. In view of the same, a petition was filed calling for the same from the custody of the son of the vendee. She further submits that no prejudice shall be caused to the defendants, if the document is called for. She relies on a decision of this Court in the case of Dolagovinda Pradhan and another Vrs. Bhartruhari Mahatab, 1991 (II) OLR-395.

5. Per contra, Mr.Swain, learned Advocate for the opposite parties supports the order. He submits that the plaintiffs have not relied upon the document. The learned trial court has rightly rejected the petition.

6. Order 16 Rule 6 C.P.C. provides :- "6. Summons to produce document.-Any person may be summoned to produce a document, without being summoned to give evidence, and any person summoned merely to produce a document shall be deemed to have complied with the summons if he causes such document to be produced instead of attending personally to produce the same."

7. In Dolagovinda Pradhan (supra), this Court held that while the Court giving direction for production of those documents during the pendency of the suit, he must be satisfied that: (A) The documents which are called for to be produced, are in power and possession of a party against whom the order is made. (B) Those documents relate to the matter in question in the suit. The documents must be such that they throw some light into the case and must be in possession of the party. But this power of directing the party to produce the documents is always subject to Secs. 130 and 131 of the Indian Evidence Act. It was further held that the Court has discretion in the matter relating to production of documents though it is a judicial discretion. It can only direct the documents to be produced in Court for inspection when they throw some light into the case and in possession of the party on the ground that the documents are related to the matter in question in the suit.

8. The instant case may be examined on the anvil of the decision cited supra. The provision contained in Order 16 Rule 6 of C.P.C. is not to penalize a party. The plaintiffs have filed the certified copy of the registered sale deed. They assert that the document was in possession of the vendee-Paremeswar Naik. He is dead. The document is in custody of their Advocate. The document would show some light into the case.

9. In view of the same, the order dated 7.8.2015 passed by the learned Civil

Judge (Sr.Division), Rairangpur in C.S.No.72 of 2013 is quashed. The petition is allowed. The learned trial court shall issue summon to produce the document.