

(1959) 12 OHC CK 0004

In the Orissa High Court

Case No : Civil Revision No. 126 of 1958

Satyabhama Panigrahiani

APPELLANT

Vs

Krishna Chandra Panigrahi and Another

RESPONDENT

Date of Decision : 19-12-1959

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 16, 20

Citation : AIR 1961 Ori 69 : (1960) 26 CLT 274

Hon'ble Judges : J.K. Misra, J

Bench : Single Bench

Advocate : M.S. Rao and M.K.C. Rao, for the Appellant; R.C. Misra, for the Respondent

Final Decision : Partly Allowed

Judgement

J.K. Misra, J.—This revision petition relates to Title Suit No. 7 of 1957 in the Court of the Munsif, Parlakimedi. The petitioner is the defendant in the said suit and the opposite parties, the plaintiffs in the said suit, are her step sons. There was a suit (No. 11 of 1945) in the Court of the Subordinate judge, Srikakulam, in which the parties to the present dispute were parties. That suit was one by the present petitioner, as the plaintiff, for maintenance, for arrear maintenance, for division of certain properties and for certain other claims of money.

In the said suit, there was a decree based on compromise between the parties, in which 3 garces of paddy per annum were fixed towards the running maintenance of the petitioner, and a stipulated amount of money was payable to her for all outstanding claims. The said annual maintenance was payable at the petitioner's place within the jurisdiction of Srikakulam Court and certain landed properties situated under the same jurisdiction were charged for the maintenance so decreed. It may, however, be noted that the parties had landed properties, both within the jurisdiction of the Court of Parlakimedi and the Court of Srikakulam, at the time.

The plaintiffs instituted the present suit for reduction of the annual maintenance payable by them to the petitioner, on the ground that by introduction of the Madras Estates Abolition and Conversion to Ryotwari Act of 1948, the Orissa Tenants Protection Act of 1948 and the Orissa Tenants Relief Act of 1955, their income from the landed properties had substantially reduced, and under such change of circumstances, the maintenance fixed for their step mother was to be substantially reduced. The petitioner raised two preliminary points -- one regarding the jurisdiction of the Court at Parlakimedi and the other regarding the maintainability of the suit. The learned trial court disposed of both the preliminary objections against the petitioner.

2. Coming to the question of jurisdiction, it may be noted that, u/s 20, clause (c), C. P. C. the cause of action arose partly within the jurisdiction of the Court of Parlakimedi and partly within the jurisdiction of the Court of Srikakulam, inasmuch as the different Acts passed by the State Governments of Orissa and Andhra Pradesh were alleged to have substantially affected the income of the plaintiffs arising out of their lands situated in either States, on the basis of which the quantum of maintenance had been agreed to between the parties in the previous suit

Section 20, C. P. C. is a residuary section, and it is conceded that if no other section applied, then the plaintiffs' case was covered by Section 20, Clause (c), C. P. C. But what had been urged before the Court below and was also urged before me is that Section 16, C. P. C. applied, inasmuch as the maintenance decree was a charge upon the immovable property within the jurisdiction of the Court of Srikakulam, and the determination of the present maintenance would affect the said charged property.

Section 16, clause (d), C. P. C. on which reliance is sought to be placed, provides that any suit for the determination of any other right to, or interest in, immovable property, shall be instituted in the Court within the local limits of whose jurisdiction the property is situate. If maintenance is claimed and certain properties are sought to be charged for such maintenance, such a suit for maintenance lies only before the Court within whose jurisdiction the property intended to be charged situates. This view has been taken in *Sitabai Raghunath Vaidya Vs. Laxmibai Vyankatesh Vaidya*, and *Snehalata Devi Vs. Samanta Radha Prasanna Das*, .

In the present case, the plaintiffs make no claim to remove the charge from over the properties which have been charged for maintenance in the previous suit. Their claim is confined to reduction of the quantum of maintenance. So, there is no question of any determination of charge in the present suit. No doubt, the charge on the landed properties is indirectly affected in the sense that by the reduced maintenance the burden may be lighter; but when there is no question before the Court for determination of any question regarding the charge, the plaintiff's case has rightly been held not to be covered by Section 16, Clause (d) C. P. C.

3. As to the question of maintainability, the petitioner's Contention before the Court below was that the quantum of maintenance, accepted by her in the previous compromise, was in consideration of her abandoning some other claims in respect of movables and immovables, and as such it admitted no reduction. On the contrary, the contention on the other side is that towards the other claims of the petitioner in the previous suit, a fixed amount of money was compromised and the quantum of maintenance, agreed to, was Only in respect of the running maintenance that she claimed. It is conceded before me by the learned counsel for the opposite parties that if the quantum of maintenance, previously fixed in compromise, was in consideration of the petitioner having abandoned ether parts of her claims, then the quantum could not admit of any reduction, even though circumstances have changed. The relevant portions of the Compromise petition are as follows:--

"Towards all the plaint claims, made by the plaintiff, namely, the claim of maintenance, the costs of this suit, the past maintenance, the separate residence, pilgrimage, brata, claim of utensils, including the plaintiff's claim of share in certain properties, etc., the plaintiff shaU get from the defendants 1 and 2 : 1. The defendants 1 and 2 shall pay to the plaintiff, 3 garces of paddy.....

X X X X X X 6. The defendants 1 and 2 shall pay to the plaintiff an amount of Rs. 2,800/-

7. In view of this compromise in this suit the plaintiffs shall give up all other claims, including her claim of share of certain houses and other properties.

8. The defendants shall give up their other counter-claims in this suit against the plaintiff."

It is contended on the side of the opposite parties that Rs. 2,800/- was paid to the petitioner for her other claims; and that 3 garces of paddy was fixed for her claim for running maintenance at a higher quantity. From the compromise petition, such an inference cannot necessarily be taken, and the defendant's case, that she accepted the running maintenance at a particular quantum in view of her giving up other claims, cannot be overruled. So, on this matter, one could only come to a conclusion, after evidence had been adduced by the parties as to what was the real position.

4. In the result, while I agree with the finding of the learned trial court that the Court at Parlakimedi has jurisdiction to try the suit, I set aside the finding on the other issue and leave it open, to be decided after evidence has been adduced by the parties. The revision petition is partly allowed. In the circumstances, the parties are to bear their own costs of this Court.