

(1999) 10 OHC CK 0003

In the Orissa High Court

Case No : Civil Revision No's. 195 of 1999 and 147 of 1998

Smt. Pusalata Das alias Moharana

APPELLANT

Vs

Muralidhar Bhol
 Smt. Pusalata Das alias Moharana
and Another Vs Muralidhar Bhol and Others

RESPONDENT

Date of Decision : 15-10-1999

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115, 151, 24

Citation : (2000) 89 CLT 457 : (1999) 2 OLR 637

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

Bench : Single Bench

Advocate : Ashok Mohapatra, K.N. Parida, M. Misra, R.K. Mohanty, S.C. Sahoo and N.C. Rout in Civil Revision No. 195/99 and A.K. Mohapatra, K.N. Parida, M.R. Mishra, S.C. Choudhury, R.K. Mohanty and S.C. Sahoo in Civil Revision No. 147/98, for the Appellant; G. Mukherji, P. Mukherji, J. Rath, S. Patnaik and M.K. Mazumdar, in Civil Revision No. 195/99 and Partha Mukherji and Srinivas Patnaik in Civil Revision No. 147/98, for the Respondent

Judgement

P.K. Misra, J.—In Civil Revision No. 195/99, the plaintiff has come up in revision under the following circumstances : She had filed Title Suit No. 398/96 for declaration of right, title and interest over the disputed property and for further declaration that the registered sale deed No. 4181 dated 27.12.1995 is null and void and for permanent injunction against the present opposite party and Bijayalaxmi Das as defendants. During the pendency of the said suit, he filed an application numbered as Misc. Case No. 379/96 under Order 39, Rules 1 and 2, read with Section 151 CPC against the present opposite party for interim injunction. The trial Court by its order dated 28.9.1996 directed both parties to maintain status quo in respect of the "C" schedule property which order was being continued from time to time. Subsequently, the suit including the application for injunction was transferred to the Court of the 2nd Addl. Civil Judge (Senior Division), Cuttack, for disposal. The trial Court had directed that the matter shall be placed on 19.3.1999, but on the basis of wrong impression,

the Clerk-in-charge of the case of the petitioner thought that the case had been posted to 22.3.1999. Accordingly, the Misc. Case No. 379/96 was dismissed for default on 19.3.1999 due to non-taking of steps. The petitioner learnt about such dismissal on 22.3.1999 and thereafter filed an application under Order 9, Rule 4, read with Section 151, CPC for setting aside the order of dismissal dated 19.3.1999. The said application numbered as Misc. Case No. 60/99 having been rejected by the trial Court, the present Civil Revision has been filed.

2. At the time of entertaining the revision, an interim order was passed on 26.6.1999 directing status quo to be maintained and the said order has been subsequently continued from time to time.

3. During the pendency of the present revision, it transpired that in another pending suit, i.e. Title Suit No. 536/96 between the parties, Civil Revision No. 147/98 has been filed by the present petitioner and another before the District Judge, Cuttack. On the request of the counsel for the present opposite party (who is the plaintiff in the other suit and opp. party No. 1 in the revision before the District Judge), the records of the said Civil Revision No. 147/98 in the file of the District Judge, Cuttack, had been called for. Both the revisions have been heard together and are being disposed of by this common judgment.

4. The dispute in Civil Revision No. 195/99 relates to the question as to whether Misc. Case No. 379/96 (which has been subsequently renumbered as Misc. Case No. 35/99) should be restored to file for consideration. The learned counsel appearing for the opposite party has stated that the opposite party in his objection has clearly indicated that he does not want to forcibly evict the present petitioner from the disputed land and as a matter of fact, he has filed the connected suit, Title Suit No..536/ 96, for declaration of title and possession of the very same property and, as already indicated, the records in Civil Revision No. 147/98 arising out of the said suit have been called for.

5. In the aforesaid back-ground and considering the fact that order of status quo is continuing for almost about three years, instead of formally restoring Misc. Case No. 379/96 (corresponding to Misc. Case No. 35/ 99) for consideration by the trial Court on merit, I direct that the order of status quo, as already passed, shall continue till disposal of Title Suit No. 398/96. In such view of the matter, it would not be necessary for the trial Court to consider further the question of injunction.

6. Now coming to Civil Revision No. 147/98 in the file of the District Judge, Cuttack, records of which have been called for, the counsels appearing for the parties therein being the very same counsels appearing in Civil Revision No. 195/99 filed in this Court have been heard. The learned counsel appearing for petitioners in Civil Revision No. 147/98 has submitted that since the Civil Revision has been filed before the District Judge, the matter has to be disposed of by the District Judge and the High Court has no jurisdiction to dispose of such revision. He has submitted that since the valuation of the suit was less than

rupees one lakh, the Civil Revision is to be disposed of before the District Judge as per provision in Section 115 CPC, as amended by Orissa Act 26 of 1991.

7. The aforesaid contention of the counsel for the petitioners cannot be accepted in view of the provisions contained in Section 24, CPC. The relevant provision of Section 24(1)(b)(i) is as follows :

"24. General power of transfer and withdrawal :

(1) On the application of any of the parties and after notice to the parties and after hearing such of them as desired to be heard, or on its own motion without such notice, the High Court or the District Court may at any stage -

(a)

(b) withdraw any suit, appeal or other proceeding pending in any Court subordinate to it, and -

(i) try or dispose of the same; or

(ii) and (iii)"

There cannot be any dispute that a petition u/s 115, CPC must be taken to be a proceeding pending in any Court. Further there is no dispute that the District Judge is "Court subordinate to the High Court". The power u/s 24, CPC can be exercised on the basis of application of any of the parties or suo motu by the High Court. Since a connected matter was before this Court, the records of the Civil Revision before the District Judge had been called for in presence of counsels for both parties who happen to be counsels in the Civil Revision before the District Judge. The preliminary objection raised by the counsel for the petitioners, therefore, is of no avail.

8. Civil Revision No. 147/98 had been filed before the District Judge under the following circumstances : Opposite party in Civil Revision No. 195/99 has filed Title Suit No. 536/96 for declaration of title and for recovery of possession. In the said suit, the present petitioner in Civil Revision No. 195/99, who was arrayed as defendant No. 2 and co- defendant No. 3 filed a petition u/s 10, CPC, to stay the further proceedings in Title Suit No. 536 of 1996 till disposal of Title Suit No. 398/96 which is a suit for declaration of title and for permanent injunction. Schedule-C property of Title Suit No. 398/96 is the disputed property in Title Suit No. 536/96. The application for stay was rejected by the trial Court by the impugned order dated 3.12.1998. On the other hand, the trial Court passed an order that Title Suit No. 398/96 will be heard analogously with Title Suit No. 536/96.

9. The learned counsel appearing for the petitioners contended that since the suit filed by present petitioner No. 1 was earlier suit, in view of the specific provision contained in Section 10, CPC, the trial Court should have stayed the further proceedings in Title Suit No. 536/ 96 which is a later suit, till disposal of the earlier suit. He has submitted that in view such specific provision, the trial Court

had committed an illegality in directing analogous hearing of both suits in purported exercise of jurisdiction u/s 151, CPC. It has been submitted that when a specific provision has been made, the power u/s 151 cannot be invoked. In support of such contention, he has placed reliance upon the decisions reported in AIR 1862 SC 527 (Manohar Lal Chopra v. Rai Bahadur Rao Raja Seth Hiralal) AIR 1984 OH. 205 (Sudhansu Mishrani and Ors. v. Subal Mishra) and 88 (1999) CLT 395 (Gouranga Sahoo v. Rohitaswa Meher).

10. Law is well-settled that when a specific provision has been made to cover a particular aspect, there is no scope for invoking the inherent power of a Court u/s 151, CPC. However, the said principle has no application to the facts of the present case. In the present case, it is apparent that the main questions raised in both the suits are similar. Though all the parties are not common, the contesting parties are same in both the suits. One of the main issues in both the suits would be relating to validity of the sale deed allegedly executed in favour of the present opposite party by Bijayalaxmi Das, who is also a party in the other suit. Since the main parties are common and common questions of fact and law are likely to arise, it cannot be said that the trial Court has committed any illegality in directing that both the suits should be heard analogously instead of directing stay of the subsequent suit. The facts and circumstances arising in the Supreme Court decision reported in Manohar Lal Chopra Vs. Rai Bahadur Rao Raja Seth Hiralal, are completely different. The other two decisions of the Orissa High Court cited by the counsel for the petitioners relate to general principle of law and do not lay down anything which can be considered to be throwing any light on the question now involved. It is to be noticed that both the suits were pending in the very same Court and not in different Courts. The order passed by the trial Court directing analogous hearing of both the suits is in the interest of justice and it cannot be said that the order is without jurisdiction. For the aforesaid reasons, I do not find any merit in Civil Revision No. 147/98 which has been called for from the file of the District Judge, Cuttack. The question may crop up as to whether the other parties in the said Civil Revision No. 147/98 should have been heard in the present revision. Since the trial Court has passed an order of analogous hearing which has not been challenged by any other party and since such other parties are not adversely affected in any manner, it was not necessary to issue any notice in Civil Revision No. 147/98 to the other parties in the Civil Revision.

11. In the result, Civil Revision No. 195/99 is disposed of subject to the observations made in earlier paragraph-5 and Civil Revision No. 147/98 of the file of the District Judge, Cuttack, is hereby dismissed. There would be no order as to costs in any of the revisions.