

(1978) 11 OHC CK 0016

In the Orissa High Court

Case No : Civil Revision No. 252 of 1977

Sreedhar Pani and Others

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 17-11-1978

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 10(2)
Criminal Procedure Code, 1973 (CrPC) — Section 145

Citation : AIR 1979 Ori 55 : (1979) 47 CLT 98

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

Bench : Single Bench

Advocate : M.N. Das and M.M. Das, for the Appellant; Standing Counsel and P. Kar, for the Respondent

Final Decision : Allowed

Judgement

P.K. Mohanti, J.—This revisional application is directed against an order allowing an application under Order 1, Rule 10 CPC filed by opposite parties 4 to 16 for being impleaded as defendants in the suit.

2. The petitioners as plaintiffs brought Title Suit. No. 7 of 1977 against opposite parties 1 to 3 for declaration of title to the suit land and for a permanent injunction restraining them from interfering with their possession. It was alleged that by the alluvial action of the river Paika there was accretion to the rayati holding of the plaintiffs to an extent of 17 acres and the plaintiffs are entitled to the accreted land as an increment to their tenure. Opposite parties 4 to 16 filed an application under Order 1, Rule 10 CPC for being impleaded as parties to the suit alleging that they had taken temporary lease of the suit land from the Tahasildar, Kujang and after expiry of the lease they have been continuing in possession of the land and have also constructed a house thereon. The application was opposed by the plaintiffs. They denied the allegation that the opposite parties 4 to 16 were continuing possession of the lands after expiry of the annual lease in their favour.

3. The learned Munsif came to hold that the petitioners and opposite parties 4 to 16 have been quarrelling over the possession of the suit lands since last few years; that it was just and proper to decide the suit in presence of opposite parties 4 to 16 so as to avoid multiplicity of proceedings and that prima facie the opposite parties 4 to 16 are necessary parties to the suit. Upon such findings, he directed the petitioners to implead opposite parties 4 to 16 as defendants in the suit.

4. It is urged on behalf of the petitioners that opposite parties 4 to 16 have no semblance of title or interest in respect of the suit lands and they are neither necessary nor proper parties to the suit.

5. Sub-rule (2) of Rule 10 of Order 1, CPC provides as follows :--

"The Court may at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the Court to be just, order that the name of any party improperly joined, whether as plaintiff or defendant, be struck out, and that the name of any person who ought to have been joined, whether as plaintiff or defendant, or whose presence before the Court may be necessary in order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the suit, be added.""

The sub-rule is applicable to two types of cases:--

(i) where a person ought to have been joined as a plaintiff or defendant and is not so joined and

(ii) where without his presence the question in the suit cannot be completely and effectually adjudicated upon.

6. The sine qua non for any person being impleaded as a party to a suit is that he should have a direct or tangible interest in the subject matter. If the questions involved in the suit can be decided without the proposed party, the judicial discretion vested in the court to implead parties under Order 1, Rule 10(2) Code of Civil Procedure should not be exercised. Before directing a party to be impleaded, the court must be satisfied about the genuineness of his interest in the litigation.

7. In the case of *Narahari Mohanti and Others Vs. Ghanashyam Bal and Others*, , it was laid down that two tests must be satisfied before a third party can be impleaded under O. 1. Rule 10 (2) Code of Civil Procedure. It was laid down as follows (at p. 187);--

"Two conditions must, however, be satisfied before a party is considered to be a necessary party. They are : (i) there must be a right to some relief against the party not joined. This means that no decree can be passed without affecting the rights of the absentee-parties; and (ii) the presence of the absentee-party should be necessary in order to enable the Court to effectually adjudicate upon and settle all questions involved in the suit. This concept includes the idea that no

decree should be passed by Court which would be rendered infructuous or would become ultimately inexecutable. If a case satisfies these tests, then the absentee-party is a necessary party and the suit cannot be effectually and completely adjudicated upon in respect of all questions involved without that party being impleaded in the suit."

8. In the instant case, the question involved in the suit is whether the suit land is an accretion to the rayati holding of the plaintiffs and whether they are entitled to possess the same as an increment to their tenure. The plaintiffs' contention is that they have been in continuous possession of the suit land as a part and parcel of their raiyati holding. The materials on the record show that there was a proceeding under Section 145, Code of Criminal Procedure between the petitioners and the opposite parties 4 to 16 and by the final order of the criminal court made on 28-7-1975, possession of the petitioners was declared. The petitioners have filed rent receipts and settlement parcha in proof of their possession of the suit lands. The opposite parties 4 to 16 contended that the suit land belongs to the Government and they cultivated the same on the basis of an annual lease granted in their favour by the Tahasildar, Kujang. It was also contended that after expiry of the annual lease they have been continuing possession of the lands.

9. As mentioned earlier, possession of the petitioners over the land in dispute was declared in a proceeding u/s 145, Code of Criminal Procedure on 28-7-1975. The contention of the opposite parties 4 to 16 that they have been continuing possession of the suit lands could not, therefore, be believed. If the question at issue between the petitioners and the State of Orissa can be worked out without anyone else being brought in, a stranger should not be added as party.

10. The plaintiffs have not asked for recovery of possession. They claim to be in possession after termination of the proceeding u/s 145 Code of Criminal Procedure. The dispute regarding possession, if any, between the petitioners and opposite parties Nos. 4 to 16 need not be gone into before any relief can be granted to the plaintiffs in the present suit filed against the State of Orissa and its officers. The decree that is to be passed against the defendants cannot be rendered infructuous or inexecutable if the opposite parties 4 to 16 are not added as parties. Merely because the opposite parties 4 to 16 allege that they are in possession of the land even after expiry of the annual lease, they cannot be considered to be proper or necessary parties. The court had, therefore, no jurisdiction to add them as parties to the suit.

11. I am in respectful agreement with the observations made by Sarkaria, J. in *Banarsi Dass Durga Prashad Vs. Panna Lal Ram Richhpal Oswal and Others*, that (at p. 60) :---

"As a rule the Court should not add a person as a defendant in a suit when the plaintiff is opposed to such addition. The reason is that the plaintiff is the dominus litis. He is the master of the suit. He cannot be compelled to fight

against a person against whom he does not wish to fight and against whom he does not claim any relief".

12. In the result, the civil revision is allowed and the order of the court below directing the plaintiffs to add opposite parties 4 to 16 as defendants in the suit is set aside. In the circumstances of the case, I make no order as to costs.