

(1988) 07 OHC CK 0043

In the Orissa High Court

Case No : Civil Revision No. 702 of 1984

Sri Harihar Mishra

APPELLANT

Vs

Bairiganjan Mishra and Others

RESPONDENT

Date of Decision : 08-07-1988

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 6 Rule 17, 115

Citation : (1988) 66 CLT 836

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

Bench : Single Bench

Advocate : D.P. Sahoo, for the Appellant; H.S. Misra, for O.P. Nos. 1 to 6 and 8, for the Respondent

Final Decision : Dismissed

Judgement

K.P. Mohapatra, J.—The Defendant in Title Suit No. 10 of 1978 of the Court of Subordinate Judge, Bolangir is the Petitioner. He has challenged the order by which a petition for amendment of the plaint under Order 6, Rule 17 of the CPC ("Code" for short) was allowed and Defendants 2 to 5 were impleaded as co-Defendants.

2. The opposite parties claiming to be the legal heirs of late Siba Prasad instituted the suit for partition. Their case in short is that late Dibakar had three sons, namely, the Petitioner late. Sibaprasad, late Suryamani and four daughters named Subhadra, Sabitri, Bengal and Sarojini. Late Suryamani died unmarried. Dibakar owned the suit land recorded in the settlement records in his name. When the suit for partition was instituted the opposite parties stated in para-5 of the plaint that Dibakar died in the year 1964 leaving behind 3 sons namely, Harihara, late Sibaprasad and late Suryamani as his legal heirs and successors, After his death. .the three sons possessed the suit lands as members of the Hindu joint family. There was no averment in the plaint that Dibakar had also left 4 daughters named above. In his written statement the Petitioner stated that Dibakar left only himself as his son, heir and successor. Late Sibaprasad and late

Suryamani were not his sons and were strangers. Dibakar had also no daughters. Nevertheless he pleaded that the partition suit was bad for, non-joinder of parties.

3. During trial of the suit when p.w. 2 was being examined he made the disclosure in his evidence that Dibakar, besides having 3 sons namely, the Petitioner, late Sibaprasad and late Suryamani had also 4 daughters named Subhadra, Sabitri, Bengal and Sarojini. On account of this fact having come to light, the opposite parties filed a petition for amendment of the plaint in order to implead the above named women as co-Defendants in the suit. The petition for amendment was opposed by the Petitioner on the ground that they were not daughters of Dibakar and at a late stage the plaint could not be amended by introducing new parties. Moreover, the admission by the opposite parties in para-5 of the plaint would be taken away in case the amendment was allowed.

4. The learned Subordinate Judge held that the nature of the suit would "not be changed "by the,proposed amendment and in order to, avoid multiplied of suits it was necessary to implead the four women as parties so as to determine their status and right as it came to light that they were daughters of Dibakar.

5. Mr. D. P. Sahoo, learned Counsel for the Petitioner strenuously urged that the opposite parties admitted in para-5 of the plaint that Dibakar left 3 sons as legal heirs and successors which in other words means that he had no other legal heirs and successors muchless, daughters. By amending the plain to add that he had also left behind him 4 daughters as successors, the effect of the admission made in the plaint will be completely taken away. According to him, the significance of the admission is that if the suit would succeed he would get half-share in the suit land and in case the amendment is allowed to stand, his share will be reduced to 1/6th. In such a case, the learned Court below should have been reluctant to allow the amendment.

6. In para-5 of the plaint the following averment was made:

The Dibakar died in 1964 leaving behind his three sons Harihar, Suryamani and Shiba Prasad as his legal heirs and successors. After the death of Dibakar, his three sons possessed the suit lands as members of the joint Hindu family." On interpretation of the literal meaning which the opposite parties wanted to convey to the Court was that Dibakar left behind 3 sons as his legal heirs and successors who possessed the suit land as members of the joint family after his death. It is relevant to indicate that it was not stated specifically that Dibakar had left "only 3 sons" as his legal heirs and successors. So, at the outset, it cannot be said that the admission of the opposite parties in para-5 of the plaint was to the effect that except 3 sons, Dibakar had no other children. The Petitioner had, however, stated in his written statement that he was the only son of Dibakar and at the same time took the plea of non-joinder of parties.

7. Inconsistent and alternative pleas can be taken in pleadings, but while doing so, admissions made therein cannot be completely displaced. If admissions are displaced in seeking amendments of the pleadings by one of the parties," the

other party is likely to irretrievably prejudiced *Modi Spinning & Weaving Mills Co. Ltd. and Anr. v. Ladha Ram and Co.* AIR 1977 S.C. 780. Procedural law is intended to facilitate and not to obstruct the course of substantive justice. Provisions relating to pleadings in civil cases are meant to give to each side initiation of the case of the other so that it may be met, to enable Courts to determine what is really at issue between parties and to prevent deviations from the course which litigation on particular causes of action must take- *Ganesh Trading Co. Vs. Moji Ram*, . In *Panchdeo Narain Srivastava Vs. Km. Jyoti Sahay and Another*, , it was significantly held that an admission made by a party in pleadings may be withdrawn or may be explained away. In laying down the above proposition, however, reference was not made to *Modi Spinning & Weaving Mills Co. Ltd. and Anr. v. Ladha Ram and Co.* AIR 1977 S.C. 780, but the ratio of the decision in *Ganesh Trading Co. v. Maji Ram*, was followed. It cannot, however, be said that the Supreme Court laid down two contradictory principles because, in the earlier decision referred to above it was clearly held that a party to the suit can take inconsistent *Ganesh Trading Co. Vs. Moji Ram*, and alternative pleas and cannot completely displace the admission made in the pleadings. It, therefore, cannot be said as a general proposition that by amendment an admission of fact cannot be withdrawn. So, pleadings and amendments thereto in each case have to be carefully scrutinised if the court is called upon to adjudicate if a party thereto can take inconsistent and alternative pleas or by way of amendment can be permitted to displace or withdraw any admission made therein.

8. In the light of the aforesaid discussion, if the averments made in para 5 of the plaint are considered, it would appear that the opposite parties did not deny the existence of 4 daughters of Dibakar. All that they stated was, Dibakar had 3 sons who were his legal heirs and successors. The above averments did not preclude the 4 women claiming as daughters to appear independently in court and pray for being impleaded as parties claiming their respective shares. The above apart, it transpires from the evidence of p.w. 2 that Dibakar, in addition to 3 sons, had also 4 daughters. Moreover, the Petitioners himself stated in his written statement that the suit was bad for non-joinder. It is the settled principle of law that if amendment of the pleading should be necessary to avoid multiplicity of suits and litigations such amendment in particular should not be refused. If in the suit the 4 women claiming as daughters are not impleaded, the suit for partition cannot be effectively and finally decided because, after it is decided between the parties originally impleaded, these 4 women claiming as daughters might again come up and claim shares in the suit land, in which case the entire petition suit already finally disposed of shall be reopened, thereby giving rise to multiplicity of litigations. It is true that amendment of pleadings at a late stage should be discouraged, particularly so when hearing of the suit has already commenced. But there may be cases where even during hearing of suits amendment of pleadings may be necessary. Therefore, it has been held time without number that mere delay is not sufficient to reject a prayer for amendment if the party

can be adequately compensated by costs.

9. After considering the facts and principles of law referred to above, I am of the view that it is not a case in which a specific and emphatic admission shall be withdrawn by the opposite parties by amendment of the plaint. The nature of the suit, that is partition, shall not be changed. On the other hand, the amendment seems necessary for effective and complete adjudication of disputes between the parties and for avoidance of multiplicity of suits and litigations. For delay in bringing the amendment, the Petitioner can be adequately compensated by costs. In a case of this nature therefore, interference by this Court in exercise of its civil revisional jurisdiction u/s 115 of the Code would be unjustified.

10. Before I close, I would like to observe that the opposite party shall pay cost of Rs. 500/- (rupees five hundred) to the Petitioner and unless the cost is paid as directed within a date to be specified by the learned Subordinate Judge the petition for amendment should be deemed to have been rejected. On payment of costs only one opportunity shall be given to the newly added Defendants for filing their written statements if any. On the day the written statements are filed issues should be recast and soon thereafter hearing of the suit shall be taken up without giving indulgence to the parties to make further delay.

11. For the reasons stated and subject to the observations made the civil revision is dismissed. The lower court records may be sent back forthwith.