
(2023) 10 OHC CK 0199
In the Orissa High Court
Case No : CMP No. 917 Of 2023

Surendra Nayak

APPELLANT

Vs

Bidyulata @ Bidulata Pradhan And Another

RESPONDENT

Date of Decision : 31-10-2023

Acts Referred:

Citation : (2023) 10 OHC CK 0199

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

Bench : Single Bench

Advocate : Lingaraj Dash

Final Decision : Dismissed

Judgement

K.R. Mohapatra, J

1. This matter is taken up through hybrid mode.
2. Order dated 11th July, 2023 (Annexure-1) passed by learned Senior Civil Judge, Pipili in C.S. No.138/447 of 2017/2013 is under challenge in this CMP, whereby learned trial Court refused to admit documents obtained under the Right to Information Act, 2005 (for short, 'the Act') from the Neheru Nodal U.P. School, Bantalsingh in evidence.
3. It is submitted by Mr. Dash, learned counsel for the Petitioner that Bidyulata @ Bidulata Pradhan-Defendant No.1 is the adopted daughter of Jaga @ Jagabandhu Pradhan. She was pursuing her studies in Neheru Nodal U.P. School, Bantalsingh and in the school admission register, the name of her father was reflected as Jaga @ Jagabandhu Pradhan. In course of trial of the suit, the Petitioner had filed an application to summon the Headmaster of Neheru Nodal U.P. School, Bantalsingh to prove the admission register to establish that Defendant No.1 is the adopted daughter of Jaga @ Jagabandhu Pradhan. The said application was rejected vide order dated 16th September, 2022 (Annexure-10) by learned Senior Civil Judge, Pipili. Assailing the same, the Petitioner preferred CMP

No.1199 of 2022. The said CMP was dismissed vide order dated 9th February, 2023 (Annexure-11) with the following observation:

"4. Upon hearing learned counsel for the Petitioner and on perusal of the impugned order, it appears that the Petitioner seeks for summoning the Headmaster of Nehru Nodal U.P. School, Bantalsingh to prove that father of Bidulata Pradhan (Defendant No.1) is Jaga @ Jagabandhu Pradhan. It further appears that a petition of similar nature was dismissed on 24th August, 2018 and it was never challenged. It further reveals from the impugned order that the matter is posted for further evidence of Defendants, which shows that the evidence of Plaintiff has already been closed Entertaining such an application at this stage will certainly be an abuse of process of Court, more particularly when the petition of similar nature had already been rejected since 24th August, 2018, as submitted by learned counsel for the Petitioner. Since the Petitioner has already led evidence in the matter, summoning the Headmaster of Nehru Nodal U.P. School, Bantalsingh at this stage will also delay in disposal of the suit. Thus, I find no infirmity in the impugned order."

4. After closure of evidence from both the sides, the Petitioner obtained the copy of school admission register of Defendant No.1 under the provisions of RTI Act and filed an application to exhibit the said documents. Although information obtained under the Act is a public document, but learned trial Court rejected the application stating that those are not public documents and the evidence from both the sides is closed.

5. It is submitted that the aforesaid documents are essential to establish that Bidyulata @ Bidulata Pradhan-Defendant No.1 is the adopted daughter of Jaga @ Jagabandhu Pradhan. Further, learned trial Court has committed an illegality in holding that there is no pleading in the plaint with regard to the relationship between Defendant No.1 and Jagabandhu Pradhan. He, therefore, submits that the impugned order under Annexure-1 is not sustainable and is liable to be set aside.

6. The Petitioner also seeks to assail the order dated 24th August, 2018 (Annexure-5) by which an application to summon the Headmaster of Nehru Nodal U.P. School, Bantalsingh, was rejected. It is submitted that since the earlier CMP was dismissed observing that the order dated 24th August, 2018 was not challenged, the same is challenged in this CMP. He, therefore, prays for setting aside the order under Annexure-5.

7. Considering the submission made by learned counsel for the Petitioner and on perusal of the record, it appears that the Plaintiff-Petitioner in the plaint under Annexure-2 has categorically stated at Paragraph-11 that Defendant No.1 was pursuing her studies in Bantalsingh U.P. School and the school register shows that she is the daughter of Jagabandhu Pradhan of village Hatasahi. It was also stated that the Jagabandhu Pradhan had signed the school admission register as the father of Bidulata Dei @ Pradhan @ Nayak. In order to establish the same,

the Petitioner had filed two applications to summon the Headmaster of Neheru Nodal U.P. School, Bantalsingh to produce the admission register and adduce evidence in that regard. Both the applications were rejected and ultimately, this Court in CMP No.1199 of 2022 confirmed the said order. Thus, there is no scope for the Petitioner to challenge the order dated 24th August, 2018 in this CMP after a lapse of more than five years.

8. It further appears that the evidence from both the sides has been closed and the prayer for summoning the Headmaster of Neheru Nodal U.P. School, Bantalsingh has been rejected. No explanation has been offered, as to why, the Petitioner obtained information under the Act belatedly and sought to admit the same in evidence after closure of the evidence from both the sides. It further appears that the Plaintiff-Petitioner has not challenged the order passed in CMP No.1199 of 2022 and it has attained its finality. In that view of the matter, admitting the document at such a belated stage will certainly prejudice the Defendant No.1, as rightly observed by learned trial Court.

9. Accordingly, the CMP being devoid of any merit stands dismissed.

Urgent certified copy of this order be granted on proper application.

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