

(2008) 09 OHC CK 0062
In the Orissa High Court
Case No : Writ Petition (C) No. 8568 of 2008

Umakanta Dwibedi and Others	Vs	APPELLANT
Somanath Dwibedi and Others		RESPONDENT

Date of Decision : 02-09-2008

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 11 Rule 1, Order 11 Rule 21, Order 6 Rule 17

Citation : (2008) 09 OHC CK 0062

Hon'ble Judges : S. Panda, J

Bench : Single Bench

Advocate : N.C. Pati, S. Misra, A.K. Das, N. Singh and M.R. Dash, for the Appellant; S. Mohanty, S.N. Biswal, P.K. Samantray and D.P. Pattnaik, for the Respondent

Final Decision : Allowed

Judgement

S. Panda, J.—In this writ application, challenge has been made to the order dated 20th of May, 2008 passed by the learned Civil Judge (Senior Division), Rourkela, in Civil Suit No. 60 of 2005 rejecting an application filed by the Petitioners under Order 11, Rule 1, CPC to put the interrogatories put by him to be answered by the Plaintiff as those interrogatories might be relevant for the purpose of cross-examination of the witnesses, but not for the purpose of the provision of Order 11, Rule 1, Code of Civil Procedure

2. Defendants 1 to 7 are the Petitioners and the facts leading to this case are as follows:

Opposite party No. 1 as the Plaintiff filed the suit for declaration that the document dated 16.1.2004, the purported Will executed by Smt. Dhaneswari Dwibedi, the mother of the Plaintiff and the Defendants was void and not enforceable and also not executed by her and further to declare that the mutation case pending before the Tahasildar, rourkela on the basis of the said purported Will was illegal and further reliefs as may be deemed fit and proper. As

per his pleadings in the plaint, he stated that the disputed land was Bhogra land of Bidyadhar Dwibedi and after his death, Defendant No. 7 being the eldest son became the village Headman and he effected partition of the joint family property including the Bhogra land by virtue of a registered document dated 8.7.1967 and the said registered partition deed was a nominal document and never acted upon and a share was allotted to late Dhaneswari Dwibedi in the said partition deed and by virtue of that allotment Dhaneswari bequeathed Ac.0.195 decimals which was Bhogra land previously in favour of Defendants 1,2 and the deceased son of Dibya Sankar Dwibedi by virtue of a registered Will in the year 2004 and as Dhaneswari was old and suffering from various diseases, taking advantage thereof, Defendant No. 1 took her to his home on the pretext of family ceremony and obtained a registered Will from her which came to the knowledge of the Plaintiff when mutation proceeding was started before the Tahasildar, Rourkela and as the property bequeathed by Dhaneswari as Bhogra land, the said land did not belong to her and the Will be declared as void and in the plaint, the Plaintiff also pleaded many general facts unconnected with the scope and ambit of the suit for which the Defendants filed an application under Order 6, Rule 17, CPC to delete those facts. The Defendants' application was rejected by the trial court. Against the same, they preferred W.P. (C) No. 9882 of 2007 which was disposed of by this Court directing the trial court to delete the irrelevant facts.

The Defendants filed their written-statement thereafter specifically stating therein that the partition was effected in the year 1967 and it was not nominal and the parties are possessing the land as per the shares allotted to them and dealing with the property in their own right and the share allotted to Dhaneswari Dwibedi was never objected to by anybody at the time of the partition or during the current Settlement Operation. As such, the land was recorded in the names of the respective parties as per the allotment made in the said partition. Hence, the partition deed was valid for all purposes and was acted upon. While the matter stood thus, the Defendants filed an application under Order 11, Rule 1, CPC to put certain interrogatories to the Plaintiff and in that interrogatories, they specifically formulated question Nos. 2, 3, 4, 8 and 9 regarding the registered partition deed and shares allotted in favour of the parties and also regarding dealing with the properties by the parties independently thereafter and whether the income derived from the said property being shown in the income tax return or not.

3. Learned Counsel for the Petitioners submitted that since the aforesaid questions are necessary to be answered for proper adjudication of the suit, the Petitioners filed the application seeking leave of the court. The learned Civil Judge (Senior Division) without appreciating the same rejected the application on the ground that those questions can be Put to the witnesses while cross examining them. He cited a decision of this Court in the case of M/s. Utkal Milling Industries v. Anand Kumar Chhaganlal 63 (1987) CLT 211, wherein it has been held that the purpose of serving interrogatories is to have a fair trial and to

reduce the cost of litigation by the parties on whom interrogatories is served and in view of the said decision, he submitted that in order to have a fair trial and to reduce the cost of litigation, the trial court should have allowed the petition.

4. Learned Counsel for opposite Party No. 1 submitted that there was No. partition and the Bhogra land was not settled with Defendant No. 7 in the year 1967 and the said land was settled in the name of Defendant No. 7 on 18.11.1970 in Bhogra Conversion Case No. 61 of 1966-67. Therefore, the question of allotting the land in favour of Dhaneswari Dwibedi did not arise and those interrogatories were not necessary for just decision in the suit. In support of her contention, she cited the decision of the apex Court in the case of Raj Narain Vs. Indira Nehru Gandhi and Another, .

5. From the above rival contentions of the parties and the respective pleadings made by the parties in the plaint and the written-statement and on examination of the record, it appears that this is a dispute between the family members as to whether in the year 1967 the partition was made and whether the parties are possessing their respective share of land by virtue of that partition.

6. Since this is the dispute between the parties and the scope of Order 11, Rule 1, CPC is to have a fair trial and to reduce the cost of litigation by getting admissions from the parties on whom the interrogatory is served, the trial court is to consider whether the interrogatories would help in fair trial and save the cost of litigation. this Court, in the case of Janaki Ballav Patnaik Vs. Bennett Coleman and Co. Ltd. and Others, has held that interrogatories may be administered by a party to his opponent to obtain admissions from him to facilitate the proof of his own case. The party to whom interrogatories are administered must answer them in writing and on oath. It is a valuable right of which a party should not lightly be deprived. The fact that the party has other means of proving the fact in question is not a ground for refusing interrogatories. The apex Court, in Raj Narain's case (supra), has also held that if it is necessary, the court should allow interrogatories for a fair trial. this Court, in the case of Mahesh Prasad Bharat v. Messrs. Rao and Sons and Ors. (1964) 6 OJD 53, observed as follows:

The Plaintiff purports to establish further admissions or denials from Defendants 1 to 5 as to if the specific particulars given in the interrogatories are true or not. If Defendants 1 to 5 give admissions, the Plaintiff would not be called upon to establish the same evidence. If the Defendants deny, the Plaintiff will try to make out such a case either through his own evidence or by cross examination.

The main question for consideration while granting leave to serve interrogatory is that it must have reasonable close connection with the matter in question. There cannot be any doubt that the interrogatory will reduce the cost of litigation by getting admissions from the party on whom it is served. Furthermore, once the court grants leave, non-compliance thereof is seriously viewed. The intention of Legislature in enacting Order 11, Rule 21, CPC as a consequence of non-

compliance is to dismiss the suit, if it Plaintiff, and to strike out the defence, in case of Defendant.

7. In the present case, since the interrogatories are relating to prior partition, the admissions thereof will reduce the cost of litigation and will help the fair trial. The learned Civil Judge not having considered the application filed by the Petitioners under Order 11, Rule 1, CPC keeping in mind the aforesaid provisions, this Court sets aside the impugned order dated 20th of May, 2008 passed by the learned Civil Judge (Senior Division), Rourkela, in Civil Suit No. 60 of 2005 and allows the interrogatories, i.e. question Nos. 2, 3, 4, 8 and 9, filed by the Defendants before the trial court.

8. In the result, the writ application is allowed. No. costs.