

(2007) 103 CLT 757 : (2007) 1 OLR 582 Supp

Orissa High Court

Case No: None

Smt. Sita Devi
Agarwalla

APPELLANT

Vs

Gourahari Das and
Others

RESPONDENT

Date of Decision: Feb. 28, 2007

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 1 Rule 10

Citation: (2007) 103 CLT 757 : (2007) 1 OLR 582 Supp

Hon'ble Judges: A.S. Naidu, J

Bench: Single Bench

Judgement

A.S. Naidu, J.

The Order dated 7-10-2005 passed by the learned Civil Judge (SD), Bhadrak in T.S. No. 28-1 of 1972 (FD) is assailed in this Writ Petition. It appears that the aforesaid Title Suit which was one for partition had been filed by the mother of present Opposite Parties 2 to 8. The said suit was dismissed. Challenging that dismissal judgment First Appeal No. 91 of 1975 was filed before this Court. This Court by judgment passed on 16-9-1989 allowed First Appeal and remanded the suit to the trial court for fresh disposal with certain observations. The judgment passed in the First Appeal was then challenged in AHO No. 60 of 1989. But then the said AHO was dismissed by this Court confirming the judgment passed in the First Appeal. After remand of the suit, the trial court by judgment dated 29-11-2001 decreed the suit and passed preliminarily decree on 7.12-2001. Thereafter defendant No. 6 in the suit initiated final decree proceeding and the same is pending. In the final decree proceeding a petition was filed under, Order 1, Rule 10 CPC by the present petitioner praying to implead her as a party to the said proceeding. The said petition having been rejected by the impugned order the petitioner has come before this Court.

2. According to the petitioner, by a registered sale deed she having purchased 20 decimals out of the suit land from defendant Nos. 1 and 5 as long back as in the year 1969 she is a necessary party to the final decree proceeding.

3. Mr. P.K. Rath, learned Counsel appearing for Opposite Party No. 1 - defendant No. 6 who initiated the final decree proceeding has no objection if the petitioner is impleaded as a party to the final decree proceeding. According to Mr. Rath, defendant Nos. 1 and 5 who are vendors of the petitioners had only 15 decimals of land in the disputed property and as such, direction may be issued Court by the trial court to carve out the said 15 decimal of land in the final decree proceeding.

4. Mr. Sarangi, learned Counsel appearing for Opposite Parties 13 to 20 opposes the prayer of the petitioner to be impleaded as a party to the final decree proceeding. According to him, the petitioner being not a necessary party to the final decree proceeding the petition filed by her under Order 1, Rule 10 CPC has been rightly rejected by the trial court. He further submitted that after a preliminary decree is passed no outsider can be permitted to be impleaded as a party to the final decree proceeding as that would amount to setting aside the preliminary decree itself. Relying on a decision of this Court in the case of Praful Kumar Sahu v. Pahali Swain and Ors. reported in 1985 (XI) OLR 570 Mr. Sarangi submitted that in a suit for partition an application filed by an outsider praying for his addition as a party to the final decree proceeding claiming a share in the suit property may be maintainable only in exceptional circumstances, such as, transfer of a portion of the suit property after the preliminary decree or death of a party to the preliminary decree. In the present case no such eventuality is there. According to him the petitioner having purchased some land out of the suit property after the preliminary decree was passed, cannot be impleaded as a party to the final decree.

5. The submission of Mr. Sarangi is strongly repudiated by the learned Counsel for the petitioner. According to him, Opposite Party Nos. 13 to 20 are outsider purchasers having purchased Ac.0.12.666 dec. of land out of the suit property from the same vendors, i.e. defendants 1 and 5, from whom the petitioner had purchased a portion of the suit land in the year 1968-69. As such they were earlier purchasers.

6. Be that as it may, Opposite Party Nos. 13 to 20 are also outsider purchasers having purchased some land out of the suit property from the same vendors. Thus they stand on the-same footing as the petitioner. They having been impleaded as parties to the suit, this Court finds no reason why the petitioner who purchased some land out of the suit property in the year 1968-69 should be excluded from the arena of contest.

7. This Court in the decision in the case of Parameswar Panda v. Adikanda Panda and Ors. reported in 2004 (XI) OLR 427 held that where a person not a party to the suit purchased certain properties from one co sharer, after preliminary decree was passed, can be impleaded as a party in the final decree proceeding. But then in the said case, the concerned party had purchased the hind before the preliminary decree was passed.

8. The question for consideration in this case is whether a party who has purchased before or after the preliminary decree has any nexus with the final decree proceeding. If the said parties right is going to be affected by any order that may, be passed in the final decree proceeding, to avoid multiplicity of litigations he should be a necessary party to the final decree proceeding, though not a proper party.

9. Mr. Sarangi referring to the judgment of this Court passed in AHO No. 60 of 1989 submitted that a Division Bench of this Court while dismissing the said AHO directed that the judgment passed in First Appeal No. 91 of 1975 should be complied with. There is no dispute that the preliminary decree was passed in consonance with the direction of this Court in First Appeal No. 91 of 1975 which was confirmed in the aforesaid AHO.

10. It has been observed by the Supreme Court, in the case of [Amit Kumar Shaw and Another Vs. Farida Khatoon and Another](#), that in a contingency where there is likelihood that the transferor after alienating the property does not properly defend the suit and colludes with any of the transferees, the other alienee may be joined as parties on motion being made. Such discretion like any other must be judicially exercised so as to enable the alienee to protect his interest. The court while dealing with a petition under Order 1, Rule 10 CPC has, to consider as to whether the right of the party sought to be added is going to be affected if he is not added as a party to the suit. Such right, however, will include necessary and unenforceable legal right. In the present case, the petitioner claims to have purchased a portion of the suit land in the year 1988 by a registered sale deed, i.e. before filing of the suit. But then she was not impleaded as party to the suit. At the other hand, Opposite Parties 13 to 20 who also similarly purchased portion of the suit land some time in the year 1968-69 were impleaded as parties to the suit. The right of the said parties is similar to that of the petitioner. As such, keeping any of them out of court will certainly cause prejudice.

The alienees who have been impleaded as parties to the suit are estopped from opposing the prayer of the petitioner for being impleaded as a party to the final decree proceeding, more so when the contesting defendant has no objection.

11. In view of the foregoing discussion, this Court feels that ends of justice will be better served in the petition filed by the petitioner before the court below under Order 1, Rule 10 CPC is allowed, of course precluding the petitioner from traversing or raising any contention beyond the preliminary decree. In other words, the petitioner should be bound by the judgment and preliminary decree passed by the court below, and this Court orders accordingly. This Court further directs the trial court to conclude the final decree proceeding as expeditiously as possible.

With the aforesaid direction/observation the Writ Petition is disposed of.