

IN THE HIGH COURT OF ORISSA AT CUTTACK

S.A. NO.281 OF 1988

In the matter of an Appeal under section 100 of the Code of Civil Procedure assailing the judgment and decree dated 20.04.1988 and 02.05.1988 respectively passed by the learned Sub-Ordinate Judge, Padampur in Title Appeal No.05 of 1987 by setting aside the judgment and decree dated 24.09.1987 and 15.10.1987 respectively passed by the learned Munsif, Padampur, in Title Suit No.32 of 1986.

Prasanna Kumar Sahu

....

Appellant.

-versus-

xxxx xxxx xxxx(IND)

....

Respondent.

**(Appeared in this case by Hybrid Arrangement
(Virtual/Physical) Mode:**

For Appellant

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M/s. R.C. Rath, S.K. Panda,
M. K. Mohanty, Advocates.

For Respondent

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M/s. S.C. Ghosh, Sr. Advocate,
S. Ghose, S.K. Das, Advocates.

CORAM:

MR. JUSTICE D.DASH

DATE OF HEARING:: 01.12.2022, DATE OF JUDGMENT:: 23.12.2022

D. Dash, J. The Appellant in this Appeal under Section 100 of the Code of Civil Procedure 1908 (for short, 'the Code') has assailed the judgment and decree dated 20.04.1988 and 02.05.1988 respectively passed by the learned Sub-Ordinate Judge, Padampur in Title Appeal No.05 of 1987.

By the same, the Appeal filed by the Respondent being the aggrieved Defendant of Title Suit No.32 of 1986 instituted by the

present Appellant as the plaintiff under Section-96 of the Code has been allowed. The Trial Court having decreed the suit declaring the Appellant to be not the author of 3rd pregnancy of the Respondent (Defendant); the same have been set aside in the First Appeal; and the Appellant (Plaintiff) has thus been non-suited.

2. For the sake of convenience, in order to avoid confusion and bring in clarity, the parties hereinafter have been referred to, as they have been arraigned in the Suit.

3. The Plaintiff's case is that he had been forced to execute a written document Ext.A under threat and coercion of the Police Officer of Padampur P.S., in admitting that he is the author of 3rd pregnancy of the Defendant which is false. He states that the Defendant is the legally married wife of another person of village: Kukurimunda and blessed with a son and a daughter. After their marriage, the Defendant lives with her husband in her father's house being the only daughter of her father. The Defendant became pregnant during her stay there. The plaintiff is a married man and has no such relationship with the Defendant at any time prior to the pregnancy. The father of the Defendant and father of the Plaintiff were not pulling on well and they had several disputes. It is stated that in the morning of 28.08.1986, the Plaintiff was called to the Police Station and detained there and during such period of detention, a confession was extorted from him that he was the author of the 3rd

pregnancy of the Defendant. He was then forced to sign on a compromise document out of fear and thereafter, the Plaintiff and the Defendant were taken to a studio for photograph and the Plaintiff was left in his house.

4. The Defendant admitted to have married another person of village: Kukurimunda. It is stated that after her marriage, she lived with her husband for some month in her matrimonial home and then she came and stayed in her father's place to help him. When the Defendant was carrying the second child, her husband deserted her. Then the Plaintiff being a co-villager and her friend was visiting their house and relationship between them thus developed. The Plaintiff promised to accept Defendant as his wife. Out of such relationship, the Defendant became pregnant for the third time. Thereafter as the Plaintiff betrayed the Defendant, a village Panchayat has been called and there the Plaintiff having made all such attempt to wriggle out of the situation, the father of the Defendant had to report the matter at the Police Station where in presence of village gentlemen, the Plaintiff admitted to be the author of the 3rd pregnancy of the Defendant. The grandfather of the Plaintiff scribed the said compromise document and it was signed by the Plaintiff after knowing the contents of the said document as to have been correctly written. Thereafter, the Plaintiff and Defendant went to a studio and posed for joint photograph. It is stated that the allegation now

made by the Plaintiff that he was made to sign on the compromise document under threat of the police is false and to submit the purpose.

5. On the above rival pleadings, the Trial Court having framed in total four (4) issues, upon examination of evidence and their evaluation has answered the core issue i.e. issue no.4 in favour of the Plaintiff that has led to pass a decree in the suit granting the relief as prayed for.

6. The Defendants being aggrieved by the said judgment and decree passed by the Trial Court having carried the First Appeal has been successful. Hence, the present Second Appeal is at the instance of the Plaintiff.

7. The present Appeal had been admitted to answer the following substantial questions of law:-

- “(i) Whether the suit is bad for non-joinder of the parties?
- (i) Whether the Defendant onus of truth was lying upon the Defendant to show that her husband has no access to her as contemplated under section-112 of the Evidence Act?

8. Heard learned Counsel for the Appellant. None appeared on behalf of the Respondent when the matter is called despite opportunities.

9. As would be seen that the husband of Defendant has not been made a party in the present suit. When the Plaintiff claims that he is not the author for the 3rd pregnancy of the Defendant who was the legally

married wife of another and that a document has been forcibly taken from him under threat by saying that Defendant was with her husband all through and the Plaintiff had no access; the facts emerge from the evidence that the Defendant and the husband were living apart in different villages. It is admitted that the Defendant while residing in her father place during the 3rd pregnancy. When the Defendant says that she was having no conjugal relationship with her husband since 6 years prior to suit as her husband did not agree to remain as illatom son-in-law, the Plaintiff asserts that her husband was residing intermittently at the father's place of the Defendant while admitting that the Defendant and her husband were not staying under one roof then. The Defendant too has again admitted that he had acquaintance with the Defendant and her family from her childhood and in that context, the Defendant's claim of intimacy and establishment of relationship with the Plaintiff appears to be reasonably probable. In that view of the matter; the plaintiff having sought for a declaration as above, the same directly affects the husband of the Defendant. Therefore, the view taken by the First Appellate Court that in the facts and circumstances of the case, keeping in view the reliefs prayed for, the husband of the Defendant was a necessary party is well in order. That having not been done, the finding of the Trial Court in favour of the Plaintiff entitling him to the relief

prayed for is liable to be set aside. The First Appellate Court thus is right in dismissing the suit.

Having held as above, this Court finds no further necessity to proceed to dwell upon the other substantial question of law which would serve no such purpose for this Appeal and instead be of academic. Thus, the ultimate result rendered in the First Appeal in dismissing the suit is hereby confirmed.

10. In the result, the Appeal stands dismissed. There shall however be no order as to cost.

**(D. Dash),
Judge.**

Narayan

