

IN THE HIGH COURT OF ORISSA AT CUTTACK

RSA No.154 of 2004

In the matter of an appeal under section 100 of the Code of Civil Procedure assailing the judgment and decree dated 22.09.2003 and 15.10.2003 respectively passed by the learned Additional District Judge, Boudh in R.F.A. No.01 of 2003 confirming the judgment dated 26.11.2002 passed by the learned Civil Judge (Senior Division), Boudh in T.S. No.23 of 2000.

Birendra Mahapatra

....

Appellant

-versus-

***The District Collector, Boudh &
Others***

....

Respondents

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

<i>For Appellant</i>	- M/s.M.Kanungo, D.K. Pradhan, S.Satapathy, S.N. Nanda & Y.S.P. Babu
<i>For Respondents</i>	- Mr.D.R.Parida, ASC for R.1 Mr.S.K.Nayak-1 & D.Nayak Advocates for R.2

CORAM:

MR. JUSTICE D.DASH

Date of Hearing : 04.01.2022 : Date of Judgment :10 .01.2022

D. Dash, J. The Appellant by filing this Appeal under Section 100 Civil Procedure Code (for short, 'the Code'), has assailed the judgment and decree dated 22.09.2003 and 15.10.2003 respectively passed by the learned Additional District Judge, Boudh in R.F.A. No.01 of 2003.

By the said judgment and decree, while dismissing the Appeal filed by the present Appellant-Plaintiff under Section 96 of the Code, the First Appellate Court has confirmed the judgment and decree passed by the learned Civil Judge (Senior Division), Boudh in T.S. No.23 of 2000.

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 case of the Plaintiff is that he had prosecuted his studies in Chandrachuda U.P. School and Jogendra Dev High School of Boudh. It is stated that the registers and documents of the said schools reveal that the Plaintiff's date of birth is 18th December, 1961 (18.12.1961). He appeared in the High School Certification Examination from Jogendra Dev High School, Boudh in the year 1977 and then having completed his higher studies, joined in Government Service. As ill luck would have it, the date of birth of the Plaintiff was somehow recorded as "18.02.1961" in the matriculation certificate issued by the Board of Secondary Education, Orissa, Cuttack and his service records was accordingly maintained. This mistake was, however, not known to the Plaintiff.

It is stated that on 07.04.1999, after the death of his father, when he got an opportunity to look into his horoscope, it came to his notice that his date of birth as indicated in the High School Certificate and the service records is incorrect. Then having ascertained the correct date of birth by going to the educational institutions and verifying the documents there, he approached the District Collector for necessary rectification. The grievance having not been redressed, he filed the suit for declaration that his actual date of birth is 18th December, 1961 (18.12.1961) and not 18th February, 1961 (18.02.1961). He further prayed for a direction for necessary correction of the date of birth in his matriculation certificate as well as the service records.

The Defendant-State and the Board of Secondary Education, coming to contest in their written statements, contended that the claim

is wholly time barred as it is made after twenty-three years of passing of the matriculation examination. It is stated that the date of birth, as indicated in the service record, has been recorded and maintained in accordance with the rule governing the field and at no point of time, there was any objection from the side of the Plaintiff.

4. On the above rival pleadings, the Trial Court framing seven issues, upon examination of the evidence on record and their evaluation, has answered the crucial issue no.5 holding that the date of birth of the Plaintiff as “18.12.1961” as indicated in the matriculation certificate and service records of the Plaintiff is correct. It has also been held that the claim of the Plaintiff is wholly time barred.

With the above findings, the suit having been dismissed, the First Appeal filed by the unsuccessful Plaintiff, has also been dismissed.

5. I have heard Mr.D.K.Pradhan, learned counsel for the Appellant in the matter of admission of this Appeal. Mr.D.R.Parida, learned State Counsel for Respondent No.1 and Mr.D.Nayak, learned counsel for the Respondent No.2 have also assisted in placing their submission in the matter.

6. Keeping in view the submissions made, the judgments passed by the Courts below have been carefully gone through.

7. It is seen that the Plaintiff himself has been examined as P.W.5. After issuance of matriculation examination vide Ext.5, he has mentioned the said date of birth in every such document so as to prosecute further studies upto his joining in Government service. It has been stated by him that in the service record, his date of birth as indicated in matriculation certificate, finds mention. The sole basis of

the claim of the Plaintiff that his actual date of birth is 18.02.1961 is the entry made in the admission register of Chandrachuda U.P. School, Boudh.

P.W.4, being the headmaster of the school, has stated at the time of admission, the father of the Plaintiff has given a chit stating the date of birth of the Plaintiff. That being his evidence, said chit is not placed in evidence. The entry in the said admission register does not contain the signature of the parents or guardian of the Plaintiff. The Trial Court having examined that admission register (Ext.3) has also found the entry to be not legible and that its genuineness has not been so found out in ascertaining whether it was an old entry and subsequently manipulated.

P.W.2 is the headmistress of the school, who produced Ext.3. her evidence is contradictory and the Courts below, citing good reasons, have refrained from accepting the same so as to favour the case of the Plaintiff. The Plaintiff although has proved Ext.9, the horoscope and its author P.W.3 has stated that in the year 1971, that horoscope was prepared which is after ten years of the birth of the Plaintiff. No explanation has been given as to why the horoscope of the Plaintiff was made after such long lapse of time since his birth which is quite uncommon and that makes it clear that on the date of admission of the Plaintiff in the school, this Ext.9 had not taken the birth. Moreover, the Plaintiff states that he saw that horoscope (Ext.9) after the death of his father when he was 38 years old.

With all such evidence on record, the Trial Court having held that the Plaintiff has failed to prove that his actual date of birth is 18.12.1961 and the First Appellate Court, on independent assessment of the evidence at its level, when has also affirmed the same; this Court

finds that the Courts below did commit no mistake in arriving at that conclusion.

In view of all the aforesaid, this Court finds no perversity in the matter of appreciation of evidence by the Courts below in recording such a finding that the Plaintiff has failed to prove his date of birth “18.12.1961” and not “18.02.1961” as so mentioned in the H.S.C., Certificate as well as the service record.

8. Coming to the next issue of limitation, it would reveal that the Plaintiff has not taken any steps in consonance with the provision of Regulation 6 read with the 39 of the Regulations of Board of Secondary Education, Orissa. In such state of affairs and in view of the long silence of the Plaintiff in the matter, the Courts below, in my view, have rightly placed reliance on the decision of the Apex Court in the case of “G.M., Bharat Cooking Coal Limited –V- Shib Kumar Dushad and others; AIR 2001 SC 72, in holding that no case is made out for correction of the date of birth of the Plaintiff as mentioned in the H.S.C. Examination and the service record.

9. In the wake of aforesaid, this Court finds that there surfaces no such substantial question of law meriting admission of this Appeal.

10. In the result, the Appeal stands dismissed. The Judgments and decrees passed by the Courts below stand confirmed. There shall, however, be no order as to cost.

As the restrictions due to resurgence of COVID-19 situation are continuing, learned counsel for the parties may utilize a printout of the order available in the High Court’s website, at par with certified copy, subject to attestation by the concerned advocate, in the manner

prescribed vide Court's Notice No.4587 dated 25th March, 2020 as modified by Court's Notice No.4798 dated 15th April, 2021.

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

