

IN THE HIGH COURT OF ORISSA AT CUTTACK
C.M.P. No.1700 of 2014

Pramila Dhir Samanta & Ors. ***Petitioner(s)***
Mr. S.K. Mishra,
Advocate

-versus-

Nirakar Dhir ***Opposite Party(s)***
None

CORAM:
JUSTICE BISWANATH RATH
ORDER
30.03.2022

Order No.

11. 1. Heard Mr. S.K. Mishra, learned counsel for Petitioners. In spite of appearance of a set of counsel on behalf of the Opposite Party, nobody appears at the time of call. This matter is, therefore, decided only hearing the Petitioners.
2. Dispute involved in this matter relates to rejection of an application vide Misc. Case No.795 of 1994 by the learned Civil Judge (Sr. Divn.), BBSR purportedly filed U/s.151 of C.P.C. requesting the trial court for setting aside the compromise decree dated 9.02.1982 involving O.S. No.296 of 1981(I).
3. Short background involved in this case is that the present Opposite Party instituted O.S. No.296 of 1981(I) praying therein for a decree of partition of the Scheduled 'A' property and consequential relief therein. It is alleged that in the initial stage the mother, sister though were made parties to the suit for partition, but subsequently except the predecessor of the Petitioners other

defendants were expunged vide order dated 9.02.1982. The suit appears to have been ended with compromise decree passed between the Opposite Parties and the predecessors of the Petitioners. The Petitioners claiming to have come to know about the fraud committed in obtaining a compromise decree on 17.08.1994, filed a petition U/s.151 of C.P.C. numbered as Misc. Case No.795 of 1994 thereby requesting the trial court to set aside the compromise decree on the ground of fraud.

Considering such application the trial court entering into hearing of the parties and on examination of the documents taken support by the Petitioner No.1 therein-Padmanava Dhir Samanta by its order dated 18.02.2014 came to reject the application.

4. Assailing the impugned order Mr. Mishra, learned counsel for Petitioners taking this Court to the application U/s.151 of C.P.C. and the grounds therein contended that the application U/s.151 came to be filed on two premises; one is that Padmanava Dhir Samanta was mentally suffering till 12.10.1992 and came to file the application vide Misc. Case No.795 of 1994 on 19.12.1994 only after coming to know about existence of such decree on 19.12.1994 itself and the second ground in bringing the misc. case is that there is fraud practiced between the parties entering into the compromise decree. Taking this Court to the grounds in the petition Mr. Mishra, learned counsel for Petitioners contended that Padmanava Dhir Samanta was suffering on account of mental ailment, accordingly drawing attention of this Court to the Exts.2 & 3 attempted to satisfy the Court that the Padmanava Dhir Samanta was suffering till 12.10.1992 and since it has come to know about existence of fraud involving compromise decree on 19.12.1994, it had no other option than to bring Misc. Case No.795 of 1994. More specifically reading through the averments in paragraph no.8 of the petition involved, an

attempt is also made by Mr. Mishra, learned counsel for Petitioner to establish that the Petitioner No.1 therein Padmanava Dhir Samanta was incapable and further there has been obtaining of a compromise decree behind back of the Petitioner No.1 i.e. Padmanava Dhir Samanta. Further the Petitioner No.1 Padmanava Dhir Samanta could be able to establish that he was not available for the purpose of bringing the application earlier and it is alleged that the trial court failed to appreciate such aspect.

It is, in the above premises Mr. Mishra, learned counsel for Petitioners attempted to establish his case through Misc. Case No.795 of 1994.

5. Considering the contention of Mr. Mishra, learned counsel for Petitioners, this Court finds, the O.S. No.296 of 1981 (1) came to be disposed of on compromise decree on 9.02.1982. For the own submission of Mr. Mishra, learned counsel for Petitioners, Petitioner No.1- Padmanava Dhir Samanta remained incapable till 12.10.1992. The records establish that the misc. case was registered on 19.12.1994 and Petitioner- Padmanava Dhir Samanta here while challenging the compromise decree on the ground of fraud and in answering to the delay in making such application, the Petitioner No.1- Padmanava Dhir Samanta took the plea that he came to know regarding existence of such decree on 19.12.1994 and therefore he had no other option than to file misc. case prior to 19.12.1994. This Court here observes, the Petitioner No.1- Padmanava Dhir Samanta takes contradicting plea as in the event he came to know regarding playing of fraud involving the compromise decree in the disposal of the O.S. 296 of 1981(I) on 19.12.1994, it had no occasion in bringing a lengthy case on the question of his remaining incapacitated till 12.10.1992 and the Petitioner No.1- Padmanava Dhir Samanta could have very well avoided such stand. This Court

here finds; may be for the establishment of the fact that the Petitioner No.1- Padmanava Dhir Samanta was incapacitated on the date of compromise decree, he might have taken such a stand on the issue of delay in bringing such application. This Court finds, while disposing of the misc. case the trial Court in considering the delay aspect in paragraph no.7 has come to observe as follows :-

“7. Admittedly, from the averments made by the rival parties and so also from the material in the record, it becomes crystal clear that the impugned judgment in O.S. 296/1981 was passed on 09.02.1982 and the present Misc. Case was filed by the original petitioner namely Padhamav Dhir Samant on 19.12.1994 i.e. after 12 years and 10 months. It is the specific case of the petitioner that since Padmanav, the original petitioner was ill and suffered from mental derangement who was under constant treatment and was completely cured and free from symptoms of madness on 12.10.1992 only after which he came to know about the fraud practiced on him by the O.P in obtaining his signatures on the petition for compromise and resultant judgment and decree in O.S. 296/1981. However, on perusal of Ext.2, the entry made in the relevant issue register and Ext.3, the entry made in the other issue register regarding the issuance of a certificate, it is noticed that they are conspicuously silent regarding the particular disease, period of treatment, the person who has received certificate and so also the name of the issuing institution. As such, not a scrap of medical document like any prescription, bill, cash receipt or any other contemporaneous document has been filed by the petitioners to substantiate the fact regarding the mental derangement of Padmanav who was so much incapacitated so as not to understand and comprehend the actions taken by him. Besides P.W.2 & 3 who were examined at the behest of the petitioners could not throw much light regarding the illness or mental derangement of Padmanav in this Court. That apart, it is further seen from Ext.E, the certified copy of the plaint in a suit bearing the no.T.S. 46/116 of 2006/1996 in the Court of learned Civil Judge, Sr.

Division, Bhubaneswar, that one Pramod, the son of Padmanav had filed the same. On careful scrutiny of the schedule of the land appended thereto along with that of the impugned suit T.S. 296/1981, it is seen that Pramod, belonging to the branch of Padmanav had sought for partition of 1/3rd share in respect of the suit schedule property which indicates that such decree passed in T.S. 296/1981 has already been acted upon. Furthermore it is quite pertinent to mention here that in para-8 of the judgment rendered by the Court in T.S. 46/116 of 2006/1996, the Court has specifically returned a finding that the deft.no.5 thereof i.e. the present petitioner no.1 (a), Pramila Dhir Samant is not the legally married wife of Padmanav. That apart, it is quite interesting to observe that the O.P. during his testimony has produced and proved Ext.D, the certified copy of the order dt.27.06.1990 passed in Crl. Misc. Case No.55/1990 of the Court of learned S.D.J.M, Bhubaneswar which indicates that on that date, the original petitioner of the present Misc. Case namely Padmanav had appeared therein as the O.P. engaged counsel and participated in the proceeding and subsequently on 29.07.1991, the final order was passed in the aforesaid Criminal Misc. Case. All the aforesaid documents have telltale effect on the case of the petitioners regarding the illness of Padmanav. Taking note of the materials produced from the side of the petitioners, I am constrained to hold that the petitioners have woefully fallen short of proving the mental derangement / madness of Padmanav during the aforesaid relevant period in question. Rather the material in the record clearly indicates that there has been inordinate delay on the part of Padmanav in preferring the present Misc. Case against the O.P.

6. Reading the aforesaid observation of the trial court this Court firstly from paragraph nos.15 & 16 therein finds, the Petitioner No.1- Padmanava Dhir Samanta claimed his period of suffering and ultimately claimed to have been cured from his suffering from 12.10.1992. In the process the Petitioner No.1- Padmanava Dhir Samanta has also taken help of Exts.2 & 3 to establish such case.

Reading through the observation of the trial court in considering the Misc. Case as noted hereinabove, this Court finds, the lower court has the clear observation that the Petitioner No.1- Padmanava Dhir Samanta has failed to establish the period of ailment and the nature of disease he was claiming even taking support of Ext.2 & 3 does find place therein. The lower court has even come to observe that there is even not a single scrap of paper like medical certificate, medicine bills etc. to substantiate the fact that Padmanava Dhir Samanta was suffering from mental ailment and he was thus incapable to bring such application in time. The lower court had also come to clearly observe that while the Petitioner No.1- Padmanava Dhir Samanta claiming to have been suffering from 1980 to October, 1992, he had contested the Criminal Misc. Case No.55/1990 in person and was also capable enough to engage counsel for assisting the Court in disposal of the Criminal Misc. Case No.55/1990. For the consistent view of the lower court that the Petitioner failed in establishing its case through material that he was incapacitated at least till 12.10.1992 and further for there is no explanation as to what prevented the Petitioner from approaching immediately after 12.10.1992 and keeping in view that the Petitioner No.1- Padmanava Dhir Samanta was althrough attempting to establish a case of his ailment from 1980 to 1992, this Court finds, the plea of the Petitioner that he came to know about existence of the decree involved only in December, 1994 is unbelievable. This Court also finds, the decree involved the predecessor of the Petitioners. This Court here also finds, the Petitioners have come to take an approach in the matter of limitation and have come to the court of law with inordinate delay, not only that in the event his predecessors already contested the proceeding, nothing prevented such

predecessors to challenge such decree if at all they find aggrieved and within reasonable time.

It is, in the above ground and reasons, this Court finds no scope to interfere in the impugned order.

7. The C.M.P. stands dismissed.

8. In view of dismissal of the C.M.P., interim order, if any, passed earlier stands vacated.

(Biswanath Rath)
Judge

Ayaskanta Jena

