

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No. 20933 OF 2013

Padmasini Chopdar and another

Petitioners

Mr. Amit Prasad Bose, Advocate

-versus-

Birendra Kumar Tandakar and others

.... Opp. Parties

Mr. R.K. Sahoo, Advocate

CORAM:

JUSTICE K.R. MOHAPATRA

ORDER

28.07.2022

Order No.

4. 1. This matter is taken up through hybrid mode.
2. Although this matter is listed for orders, on consent of learned counsel for the parties, the same is taken up for final disposal.
3. The Petitioners in this writ petition seek to assail the order dated 30th April, 2013 passed by learned Civil Judge (Senior Division), Bargarh in C.S. No.129 of 2010, whereby he allowed an application under Order XVIII Rule 1 C.P.C. filed by the Plaintiff-Opposite Party No.1 directing the Defendant Nos.1 and 2 to begin the hearing of the suit.
4. Mr. Bose, learned counsel for the Petitioners submits that the suit has been filed for the following relief:

“That, the Plaintiff/Opp.Party No.1 filed the aforesaid Civil Suit with the following prayers:-

- (i) *For a declaration that the sale deeds bearing Nos.453, 454 and 455 of 2010 dt.23.6.2010 (Four hundred Fifty three, Four hundred fifty four, Four hundred Fifty five of two thousand ten) shown to have been executed by the Defendant Nos.1 and 2 (One and two) in favour of defendant Nos.3,4 and 5 (three, four and five) respectively are null and void and not enforceable in law and the plaintiff is not bound by these sale deeds.*

- (ii) *For a declaration of the right, title and interest of the Plaintiff with defendant Nos.1 and 2 (one and two) and recovery of possession of the suit land.*
- (iii) *Cost of the suit and any other relief the Plaintiff is entitled to under law and equity."*

5. The suit was filed claiming that the Plaintiff is the son of Dasarath Tandakar. Thus, the sale deed executed by the Defendant Nos.1 and 2 without his consent is bad in law. The Petitioners-Defendant Nos.1 and 2 on their appearance filed their written statement denying the status of the Plaintiff- Opposite Party No.1 as the son of Dasarath Tandakar. It is averred in the written statement that the Plaintiff is a stranger to the family and has no *locus standi* to file the suit. On consideration of the rival pleadings of the parties, the following issues are framed:-

"6. That, on the aforesaid pleadings the learned trial court framed the following issues:-

1. *Is there any cause of action for the suit ?*
2. *Whether the suit is maintainable ?*
3. *Whether the Plaintiff is the son of Dasarath and after the death of his father the Plaintiff acquired right, title and interest over the suit land ?*
4. *Whether R.S.D. No.453, 454 and 455 dt. 23.6.2010 executed by defendant Nos.1 and 2 in favour of defendant Nos.3 to 5 can be declared as null and void and the Plaintiff is fount by such sale ?*
5. *Whether the Plaintiff is entitled for the reliefs as prayed for ?*
6. *To what relief the Plaintiff is entitled for ?"*

6. After settlement of the issues, the Plaintiff-Opposite Party No.1 filed an application under Order XVIII Rule 1 C.P.C. with a prayer to direct the present Petitioners-Defendant Nos.1 and 2 to begin the hearing of the suit. The

said petition was allowed vide impugned order under Annexure-1, which is under challenge in this writ petition.

7. Mr. Bose, learned counsel for the Petitioners submits that the Plaintiff has a right to begin the hearing of the suit unless the Defendants admit the facts alleged by the Plaintiff and contends that either in point of law or on some additional facts alleged by the Defendants, the Plaintiff is not entitled to any part of the relief which he seeks. In the instant case, the Defendants do not admit that the Plaintiff is the son of Dasarath Tandakar. It is categorically stated in their written statement that the Plaintiff is the stranger to the family. Thus, the provision of Order XVIII Rule 1 C.P.C. is not applicable to the instant case. It is further submitted that by allowing such application, learned Civil Judge (Senior Division), Bargarh impliedly put the onus on the defendants to prove the negative fact. When the Plaintiff averred that he is the son of Dasarath Tandakar, the Defendant Nos.1 and 2 denied the same, onus lies on the Plaintiff to prove his case to maintain the suit. These material aspects were lost sight of by learned Civil Judge while adjudicating the petition under Order XVIII Rule 1 C.P.C.. He, therefore, prays for setting aside the impugned order under Annexure-1 and issue a direction to the Plaintiff to begin the hearing of the suit.

8. Mr. Sahoo, learned counsel for the Opposite Party No.1, on the other hand, submits that the issue revolves around the status of the Plaintiff, when the Defendants Nos.1 and 2 have denied that the Plaintiff is not the son of Dasarath Tandakar, onus lies on them to prove the same. Hence, learned Civil Judge has committed no error in passing the impugned order.

He, therefore, submits that the writ petition is liable to be dismissed.

9. Taking into consideration the rival contentions of the parties and the provision of law, it is apparent that the order XVIII Rule 1 C.P.C. is only applicable to a case, where the Defendant admits the case of the Plaintiff on some grounds or additional facts that the Plaintiff is not entitled to the relief claimed. In the instant case, the Defendants did not admit the fact that Dasarath Tandakar is the father of the Plaintiff. Hence, the onus lies on the Plaintiff to prove his case to succeed in the suit. Principles of Order XVIII Rule 1 C.P.C. has been decided in the case of ***Chandra Sekhar Pattjoshi –v- Jogendra Pattjoshi and others***, reported in 2004 (I) CLR 392, wherein it has been decided that in order to adjudicate an application under Order XVIII Rule 1 C.P.C. the real test would be that a party has a right to begin, who will fail in the suit, if no evidence is adduced. In the instant case, if no evidence is led, the Plaintiff will certainly fail in the suit. Hence, the Plaintiff has to begin the hearing of the suit.

10. In view of the above, I find force in the submission of Mr. Bose, learned counsel for the Petitioners-Defendant Nos.1 and 2. Accordingly, the impugned order under Annexure-1 is set aside and the Plaintiff has to begin the hearing of the suit.

Urgent certified copy of this order be granted on proper application.

(K.R. Mohapatra)
Judge