

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No7780 of 2011

Raj Kishore Panda

..... Petitioner

Mr. Himanshu Sekhar Mishra, Advocate

-versus-

Gopeswari Panda and others

.... Opp. Parties

CORAM:

JUSTICE K.R. MOHAPATRA

ORDER

13.10.2022

Order No.

- 6.
1. This matter is taken up through hybrid mode.
 2. Petitioner in this writ petition seeks to assail the order dated 9th September, 2010 (Annexure-4) passed by learned Civil Judge (Senior Division), Bolangir in TS No.54/34 of 2002-03, whereby an application filed by the Petitioner to recall the order in accepting the written statement was dismissed.
 3. Although vide order dated 19th April, 2011 notice was directed to be issued to Opposite Parties, but as yet notices could not be served. Office notice discloses that due to late filing of requisites for issuance of notice, the same could not be issued to Opposite Parties. It is, however, submitted by Mr. Mishra, learned counsel for the Petitioner that requisites were filed in due time.
 4. Mr. Mishra, learned counsel for the Plaintiff/Petitioner submits that the suit has been filed for partition. Due to non-appearance of Defendants they were set ex-parte and subsequently the suit was decreed ex-parte. Thereafter, the Defendants filed an application under Order IX Rule 13 CPC and vide order dated 5th January, 2009, the ex-parte decree was

set aside. Thereafter, the Defendants taking several adjournments filed their written statement, which was accepted without giving any opportunity to the Plaintiff/Petitioner to have his say with regard to acceptance of the written statement. In view of the above, the Plaintiff/Petitioner filed an application on 19th March, 2010 (Annexure-3) to recall the order accepting the written statement and to reject the written statement. In support of his contention, he also relied upon case laws in the case of *Harish Chandra Panda and others Vs. Satyanarayan Panda and others*, reported in 88 (1999) CLT 420, *V. Kameswar Rao Vs. B.Nageswar Rao*, reported in 1987 (II) OLR 106 and *Arjun Singh Vs. Mohindra Kumar and others*, reported in AIR 1964 SCC 993. It is his submission that on setting aside the ex-parte decree, the Defendants cannot be relegated to the position prior to the date of hearing of the suit. Thus, their written statement could not have been accepted. This aspect was not considered by learned trial Court. It has also not considered the case laws cited by learned counsel for the Plaintiff/Petitioner. Hence, he prays for setting aside the impugned order.

5. On perusal of the impugned order, it appears that learned trial Court has discussed the factual position of the case in detail, but did not discuss the case laws cited by the Petitioner. Since the suit is of the year 2002 and in the meantime twenty years have already lapsed, this Court feels that no fruitful purpose would be served awaiting service of notice to Defendants/Opposite Parties.

6. In view of the above, this Court disposes of the writ petition with a direction that learned trial Court before

proceeding in the suit shall consider the petition under Annexure-3 afresh giving opportunity of hearing to the parties concerned. Till disposal of the petition under Annexure-3 in accordance with law, the impugned order under Annexure-4 shall be kept in abeyance.

6.1 It is further directed that learned trial Court shall make an endeavour to dispose of the petition under Annexure-3 as expeditiously as possible preferably within a period of one month from the date of filing of certified copy of this order. Mr. Mishra, learned counsel for the Petitioner undertakes to produce certified copy of this order by 20th October, 2022 before learned trial Court to receive further instruction in the matter.

Issue urgent certified copy of the order on proper application.

(K.R. Mohapatra)
Judge

