

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRP No.10 Of 2021
(Through video conferencing mode)

Bhavana Patadia

...

Petitioner

Mr. B. Baug, Advocate

-versus-

Mukesh Patadia

...

Opposite Party

Mr. S.S.Rao, Advocate

CORAM: JUSTICE ARINDAM SINHA

ORDER
03.02.2022

Order No.

- 01.** **1.** Mr. Baug, learned advocate appears on behalf of petitioner and submits, his client has petitioned under section 115 in Code of Civil Procedure, for revision of impugned order dated 4th October, 2021 made rejecting his client's application under order XII rule 6 for judgment upon admission. He demonstrates from pleadings in paragraph 4 of the plaint, that his client had stated taking forcible possession with effect from 2nd January, 2000. This was admitted by defendant in his written statement. Even then the Court below rejected his client's application by acting illegally and with material irregularity. He submits further, the order needs to be reversed because

if the Court below had made it in favour of his client, it would have finally disposed of the suit.

2. Perused impugned order. It will be sufficient to extract and reproduce below the following from it:-

*“ In the present case, even though the plaintiff claims that his possession was adverse and hostile but filed the **original** ROR of the suit schedule property bearing Khata no.736/563 under mouza Cuttack Sahar, Unit No.29, Chauliaganj which stood recorded in the name of the defendant Mukesh Patadia. No doubt the defendant admitted the claim of the plaintiff but no documents have been filed by the plaintiff regarding his actual, visible, exclusive and continued possession over the suit land. The plaintiff has not shown the clear unequivocal evidence in this regard. At this stage, except pleading there is no evidence submitted by the plaintiff with regard to the date when he came to the possession over the suit schedule property and also not filed any evidence or document with regard to his nature of possession as well as the continued, open and undisturbed possession over the same. Hence, considering the facts and circumstances of this case as well as in absence of sufficient evidence, the petition stands rejected being devoid of merit. Put up on 21.10.21 for hearing on the point of settlement of issues.”*

3. It will be seen that the learned Court below did not obtain satisfaction on pleadings only. Petitioner/plaintiff claimed adverse possession on and from 2nd January, 2000 and defendant admitted the same. Court below said in effect, in spite thereof some documentary evidence was necessary for satisfaction of proof of fact by admission. Rule 6 in order XII empowers the Court as may at any stage of the suit either on the application of any party or of its own motion and without waiting for the determination of any other question between the parties, to make such order or give such judgment as it may think fit, having regard to such admissions. The power is discretionary. Trial Court did not exercise discretion, obviously because plaintiff and defendant appear to be saying the same thing in the suit filed implying complicity in the proceeding. Therefore, the Court required documentary evidence and refused to pass order or judgment having regard to the admissions made by pleadings.

4. In circumstances stated above, this Court does not find reason to interfere with impugned order.

5. The revision petition is dismissed.

(Arindam Sinha)
Judge