

HIGH COURT OF ORISSA: CUTTACK

W.P.(C) No. 27083 of 2011

In the matter of application under Articles 226 & 227 of the Constitution of India.

Tunilata Nayak & another Petitioners

-Versus-

Bijayalaxmi Biswal & Others Opp. Parties

For Petitioners : M/s. P.K.Sahoo, Mr.A.C.Mohapatra,
Mr.A.K.Panda, Mr.A.A.Lenka.

For Opp. parties : M/s.B.H.Mohanty, Mr.D.P.Mohanty,
R.K.Nayak, T.K.Mohanty &
P.K.Swain & Mr. B.Das.

P R E S E N T:

THE HON'BLE MR. JUSTICE B.K.MISRA

Date of Judgment: 30.06.2012

B.K.MISRA, J This writ petition has been filed for quashing the impugned order at Annexure-1, on the ground that the learned Civil Judge (Sr.Divn.), Nimapara without any jurisdiction and illegally allowed the prayer of the opposite parties for amendment of the plaint in C.S. No. 29 of 2010.

2. I have heard the learned counsel for the parties. Perused the impugned order at Annexure-1 and other materials on record.

3. It is seen that Civil Suit No. 29 of 2010 was filed originally by four plaintiffs, namely Bijaylaxmi Biswal, Nirupama Biswal, Saroja Kumar Biswal and Manoja Kumar Biswal. Plaintiff No.1 Bijayalaxmi Biswal is the wife of Defendant No.1 Jogendra Biswal and Plaintiff Nos. 2 to 4 are the daughter and two sons of Plaintiff No.1 and the Defendant No.2. The suit has been filed challenging sale of the suit property by the Defendant No.2 to Defendant Nos. 1 and 3 on the ground that the sale deed in question is a spurious document and obtained by practicing fraud on Defendant No.2. After the suit was instituted, on the prayer of the Plaintiffs the name of the Plaintiff Nos. 3 and 4 Saroj Kumar Biswal and Manoj Kumar Biswal were deleted and they were transposed as Defendant Nos. 5 and 6. The original Plaintiff No.3 was allegedly a minor when the suit was filed. It is alleged that when Defendant No.6 Saroj Kumar Biswal became major he was prayed to be impleaded as a Plaintiff and to delete his name as Defendant No.6.

4. The main plank of the argument of Mr. Mohapatra, learned counsel appearing for the Petitioners is that the present Opposite Parties who are the Plaintiffs in C.S. No. 29 of 2010 have taken the trial court for a ride by misutilising the procedures and the learned Civil Judge (Sr.Divn.), Nimapara also fell into the trap of the unscrupulous Plaintiff-Opposite Parties by allowing their prayer for amendment of the plaint for the second time. It was also very strenuously contended by Mr. Mohapatra appearing for the

petitioners that when the suit was ready for hearing at a belated stage the learned trial court should not have entertained the prayer for amendment of the plaint and by allowing such amendment the learned court has traversed beyond the jurisdiction in view of the restrictions imposed in the proviso to Order, 6 Rule, 17 of the C.P.C. Besides that it was also further contended that when the suit was initially presented by the Plaintiff-Opposite Parties they avoided to pay the court fees and obtained favourable interlocutory orders and with an malafide design when have filed the petition for amendment for the second time on 16.8.2011, the same should have been disallowed.

5. Mr.B.H.Mohanty, learned counsel appearing for the opposite parties on the other hand very forcefully contended that the impugned order is a speaking and well reasoned order and therefore calls for no interference at all as by allowing the prayer of the Plaintiffs for amending the plaint no illegality has been committed as no new facts were introduced nor by incorporating the said amendments into the plaint the nature and character of the suit has been changed and the new facts which have been incorporated by way of amendment are only elucidation of some facts with regard to the fraud which was practiced by the husband of Defendant No.1 in getting the sale deed executed from Jogendra Biswal who is the Defendant No.2 in C.S. No. 29 of 2010. Accordingly, Mr.Mohanty contended that the writ petition being devoid of merit should be dismissed with cost.

6. I have gone through the petition filed by the Plaintiffs in C.S. No. 29 of 2010 seeking for amendment of the plaint. Annexure-2 the certified copy of the petition for amendment and the schedule of the proposed amendment contains the description for addition of Saroj Kumar Biswal as Plaintiff No.3 and to delete his name as Defendant No.6 from the cause title of the plaint and from the body of the plaint wherever it has been mentioned and certain facts with regard to the fake stamp papers used in the fraudulent sale deed.

7. Perusal of the certified copy of the plaint filed in C.S. No. 29 of 2010 shows that the said suit was filed with prayer to declare that the alleged sale deed executed by Defendant No.2 in favour of Defendant No.1 dated 20.2.1998 was not binding on the Plaintiffs as the same was not for the welfare of the family and not for any legal necessity and declaring the same invalid and also for permanent injunction. The plaint averments reveal that the husband of the Defendant No.1 taking advantage of the simplicity of Defendant No.2 managed to obtain the sale deed dated 20.2.1998 in respect of the whole suit schedule properties by practicing fraud and such transaction was a well led conspiracy and was not known to the Plaintiffs nor had they any occasion to know the same. I find that the Plaintiffs only elucidated the point of fraud with regard to the alleged sale deed taken by Defendant No.1 from Defendant No.2 in their amendment petition dated 16.8.2011 and no new facts have been introduced. The learned Civil Judge (Sr.Divn.), Nimapara in the

impugned order has discussed the matter in detail by keeping in mind the established position of law and allowed the prayer for amendment to the plaint and I do not find any reason to interfere with that as rules of procedures are intended to be a handmade to the administration of justice. The party cannot be refused just relief merely because of some mistake, negligence, inadvertence or even for infraction of the Rules of Procedures. The power to allow the amendment is wide and can be exercised at any stage of the proceedings in the interest of justice. The object of the Court is to decide the rights of the parties and not to punish. Courts do not exist for the sake of discipline but for the sake of deciding matters in controversy. Technicalities of law should not be permitted to hamper the Courts in administration of justice between the parties. **(2006) (II) OLR (SC) 561, Rajesh Kumar Aggarwal and others V. K.K.Modi and others, 2001 (1) OLR (SC) 475, Ragu Thilak D.John V. S.Rayappan and others.**

8. Thus, keeping in mind these golden principles of law and keeping in mind the fact scenario of this case the amendment which was sought for by the Plaintiffs on 16.8.2011 with regard to the nature of fraud practiced cannot be said to have been introduced to take the opponents by surprise as it has been specifically mentioned in the original plaint about the fraud which was practiced by the husband of Defendant No.1 on Defendant No.2 in obtaining the sale deed. By allowing the prayer of the Plaintiff-Opposite Parties for

amending the plaint, in my humble view the learned Civil Judge (Sr.Divn.), Nimapara did not commit any illegality and whatever prejudice that has been caused to the present petitioners for the delay in disposal of the suit can be mitigated on payment of cost.

9. Thus, from the aforesaid discussion the best interest of the justice would be served if the Plaintiff-Opposite Parties would pay cost of Rs.2,000/- (Rupees two thousand) to the present petitioners for the delay caused in seeking amendment. Opportunity should also be given by the learned trial court to the present petitioners who are Defendant Nos. 1 and 3 in the court below for filing additional written statement, if any after the amendments are incorporated to the plaint and the learned Civil Judge (Sr.Divn.), Nimapara thereafter proceed to take up hearing of the suit and make all endeavour to see that C.S. No. 29 of 2010 is disposed of preferably, within six months from the date of receipt of this order. Failure on the part of the present Opposite Parties who are Plaintiffs in C.S. No.29 of 2010 in paying cost as ordered above and carrying out the directions of the Court below under Annexure-1 would disentitle them of taking advantage of this order.

With the aforesaid observations, the writ petition stands disposed of.

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B.K.Misra, J.

***Orissa High Court, Cuttack
The 30th June, 2012/kks***