

ORISSA HIGH COURT: CUTTACK

CIVIL MISCELLANEOUS PETITION No.440 of 2015

In the matter of an application under Article 227 of the Constitution of India.

Umarani Mudra & others *Petitioners*

-versus-

Chief Administrator, *Opposite Parties*
Lord Jagannath Temple, Puri

For Petitioners : M/S. Vijaya Kar, A.P. Bose,
N. Hota & S.S. Routray.

For Opp. Parties : M/S. Asok Mohanty, Sr. Advocate &
Sarada Prasanna Patra
(for opposite party no.2)

Date of Judgment:30.06.2015

P R E S E N T:

THE HONOURABLE SHRI JUSTICE BISWAJIT MOHANTY

Biswajit Mohanty, J. This Civil Miscellaneous Petition has been filed by the petitioners under Article 227 of the Constitution of India with a prayer to quash the impugned order dated 19.03.2015 passed by the learned District Judge, Puri in T.R.P. No.20 of 2015 under Annexure-1 dismissing an application filed by the petitioners under Section 24 read with Section 151 of the Code of Civil Procedure, 1908 for transferring T.S. No.410 of 1995 and C.S. No.81 of 2004 now pending in the court of the learned Civil Judge (Junior Division), Puri to the court of learned Civil Judge

(Senior Division), Puri so that all these suits can be heard by the learned Civil Judge (Senior Division), Puri.

2. The facts of the present case are like this;

Petitioner Nos.2,3 & 4 filed T.S. 89/410 of 2006/1995 before the learned Civil Judge (Junior Division), Puri against opposite party nos.2 & 3 as defendant nos.1 and 2 respectively with the following prayers;

“(a) let the title of the plaintiff over the Mudra Sevapali in the Jagannath Temple in the entire month be declared and their possession thereon be confirmed;

(b) let a decree of permanent injunction be passed against the defendant prohibiting him from interfering in the Mudra sevapali of the plaintiff in the temple of Lords Jagannath throughout the month in any manner;

(c) cost of the suit be decreed against the defendants;

(d) any other relief may be granted as the court thinks fit.”

Opposite party No.2 filed C.S. No.81 of 2004 before the learned Civil Judge (Junior Division, Puri against petitioner nos.2,3 & 4 and opposite party nos.3 & 1 as defendant nos.1 to 5 respectively with the following prayer:

“(a) pass a decree of declaration that the plaintiff has right, title and interest to perform Mudra Seva Pali in Jagannath Temple at Puri as the successor of late Jagannath Mudra and further it be declared that the order passed in Misc. Case No.4/95 is illegal and inoperative,

(b) pass a decree of permanent injunction restraining the defendants from preventing or obstructing the plaintiff from performing the Mudra Seva jointly with the defendant No.1 to 4 (one to four) as per his term,

(c) that the cost of the suit may be decreed in favour of the plaintiff,

(d) And pass any other relief what the court thinks just and proper.”

Further opposite party no.2 filed C.S. No.94 of 2011 before the learned Civil Judge (Senior Division), Puri against one Gopinath Mohanty later substituted by three L.Rs., petitioner no.3 & opposite party no.3 as defendant nos.1 to 3 respectively with the following prayer;

“(A) to pass a decree declaring that plaintiff has succeeded the 2½ (Two and half) days pali of Akhanda Mekap Seba of his father Late Jagannath Mudra in the Temple of Lord Jagannath; and

(B) further declare that defendant no.1 (one) is the Khatanidar of 2½ (Two & half) days of pali of father of the plaintiff-Jagannath Mudra and he had no saleable right to sell the same to Defendant No.2 (two) who has no right, title interest over the 2½ (Two and half) days pali of Late Jagannath Mudra in the Akhanda Mekap Seba;

(C) Defendants be permanently injuncted to interfere in the peaceful possession and enjoyment of the Akhanda Mekap Seba of the plaintiff;

(D) the cost of the suit be decreed against the defendants;

(E) Plaintiff be granted such other reliefs as he is entitled under law.”

Further opposite party no.2 filed C.S. No.94 of 2014 before the learned Civil Judge (Senior Division), Puri against the present petitioner nos.1 to 4 as defendant nos.1 to 4 respectively with the following prayer;

“a) to pass a preliminary decree declaring plaintiff has 1/3rd share interest over the suit property and the parties may be directed to amicably partition the suit property within a specified time fixed by the court or else on the

application of plaintiff a survey knowing commissioner be appointed to partition the suit property as per preliminary decree and submit report and in that event the decree would be made final;

(b) Cost of the suit be decreed against the defendants,

(c) That the plaintiff be granted such other reliefs as he is entitled under law.”

It is also undisputed that both T.S. No.89/410 of 2006/1995 and C.S. No.81 of 2004 are being heard analogously. In such background, the petitioners filed T.R.P. No.20 of 2015 before the learned District Judge, Puri praying that both T.S. No.410 of 1995 and C.S. No.81 of 2004 pending in the court of the learned Civil Judge (Junior Division), Puri be heard by the learned Civil Judge (Senior Division), Puri where C.S. No.94 of 2011 and C.S. No.824 of 2014 are pending. The present petitioners contended therein that the subject matters in all the four suits were essentially same as because status of opposite party no.2 as son of late Jagannath Mudra was an issue common to all the four cases. Therefore, in the interest of justice for avoidance of conflicting decisions, the suits be disposed of by one court. Opposite party no.2 vide Annexure-3 filed a detailed objection. In the said objection, opposite party no.2 submitted that T.S. No.89/410 of 2006/1995 was being tried analogously with C.S. No.81 of 2004 by the learned Civil Judge (Junior Division), Puri and this Court vide its order dated 23.4.2014 passed in W.P.(C) No.11366 of 2013 directed the learned Civil Judge (Junior Division), Puri to dispose of C.S. No.81 of 2004 in accordance with law as expeditiously as possible,

preferably by the end of October, 2014. Further, this Court directed the parties to co-operate with the court for early disposal of the suit. Thus, both T.S. No.89/410 of 2006/1995 and C.S. No.81 of 2004 being year old cases were being tried together and the petitioners, who were the plaintiffs in T.S. No.89/410 of 2006/1995 were adopting dilatory tactics to delay the matter knowing very well that they had no merit in the suit. Opposite party no.1 further pointed out that a number of witnesses have already been examined in C.S. No.81 of 2004. The learned District Judge, Puri vide order dated 19.3.2015 passed under Annexure-1 rejected the prayer of the petitioners on the finding that the prayer made in suits pending in the court of the learned Civil Judge (Senior Division), Puri were different than the prayer made in the suits pending in the court of the learned Civil Judge (Junior Division), Puri. Secondly, the learned District Judge also referred to the judgment dated 23.4.2014 passed by this Court in W.P.(C) No.11366 of 2013 whereby this Court has directed learned Civil Judge (Junior Division), Puri to hear and dispose of C.S. No.81 of 2004 as expeditiously as possible preferably by the end of October, 2014. In such background, the learned District Judge, Puri held that if the two suits pending in the court of the learned Civil Judge (Junior Division), Puri were transferred to the court of the learned Civil Judge (Senior Division), Puri, their hearing would be further delayed, which would violate the order of this Court. Thirdly, the learned District Judge indicated in the impugned order that while the suits pending before the learned Civil Judge (Junior Division), Puri are year old suits

and suits pending before the learned Civil Judge (Senior Division), Puri are of the year 2011 and 2014 where hearing has not yet commenced unlike the suits pending in the court of the learned Civil Judge (Junior Division), Puri. Fourthly, from the orders of the learned Civil Judge (Junior Division), Puri he found that the present petitioners were trying their best to delay the disposal of the suits. For all these reasons, the learned District Judge, Puri dismissed the petition.

3. Mr. A.P. Bose, learned counsel for the petitioners contended that the learned District Judge, Puri has gone wrong in dismissing T.R.P. No.20 of 2015 under Annexure-1 filed by the petitioners despite existence of commonality of issues between the parties. He contended that one of the issues in all four suits was with regard to question of status of opposite party no.2 as son of Jagannath Mudra. Therefore, the two civil suits pending in the court of the learned Civil Judge (Junior Division), Puri ought to have been directed to be transferred before the learned Civil Judge (Senior Division), Puri. Secondly, he contended that by not allowing the prayer of the petitioners as made in T.R.P. No.20 of 2015, it might result in conflicting decisions by two different courts.

4. In this Civil Miscellaneous Petition though no notice has been issued, Mr. Asok Mohanty, learned Senior Advocate entered appearance on behalf of opposite party no.2 and defended the impugned order under Annexure-1 passed by the learned District Judge, Puri relying on objection under Annexure-3.

5. Before examining the legality or otherwise of the impugned order, it would be profitable to refer to the relevant portions of Section 24 of the Code of Civil Procedure, 1908, which are quoted below;

- “ 24. General power of transfer and withdrawal – (1)**
 On the application of any of the parties and after notice to the parties and after hearing such of them as desired to be heard, or of its own motion without such notice, the High Court or the District Court may at any stage –
- (a) xxx xxx xxx
 - (b) withdraw any suit, appeal or other proceeding pending in any Court subordinate to it, and –
 - (i) xxx xxx xxx
 - (ii) transfer the same for trial or disposal to any Court subordinate to it and competent to try or dispose of the same; or
 - (iii) xxx xxx xxx
 - (2) xxx xxx xxx
 - (3) xxx xxx xxx
 - (4) xxx xxx xxx
 - (5) xxx xxx xxx”

A perusal of the above quoted portion Section 24 of the Code of Civil Procedure Code, 1908 makes it clear that on the application of any of the parties and after notice to the parties and after hearing them, if they desire to be heard, the High Court or District Court may at any stage withdraw any suit, appeal or other proceeding pending in any subordinate court to it and transfer the same for trial and disposal by any competent court subordinate to it. The above noted power can also be exercised by the High Court or the District Court suo motu without any notice to the parties. In the instance case, let it be clear that this Court is not delaying with suo motu exercise of power by the learned District

Judge, Puri. Here is a case where an application was made by the petitioners before the learned District Judge, Puri for transfer. Thus, in such background, as per mandate of the Section 24 of the Code of Civil Procedure all the parties were/are required to be noticed. In the present context, the parties would mean all the parties involved in four suits.

6. Now to the contours of power under Article 227 of the Constitution of India. Under the said Article, this Court is supposed not to interfere with the impugned order unless there is an error apparent on the face of the impugned order. Further, this Court has to keep in mind that such power of superintendence is to be used most sparingly and only in appropriate cases in order to keep the subordinate courts within the bounds of their authority and not for correcting mere errors as held by the Hon'ble Supreme Court in the case of **Waryam Singh and another v. Amarnath and another** reported in **AIR 1954 SC 215**.

Further in the case of **Laxminkant Revchand Bhojwani and another v. Pratapsing Mohansingh Pradeshi (Deceased) through his Heirs and legal representatives** reported in **(1995) 6 SCC 576** the Hon'ble Supreme Court clearly reminded that the High Court that under Article 227 of the Constitution of India it cannot assume unlimited prerogative to correct all species of hardship or wrong decisions. Its exercise must be restricted to cases of grave dereliction of duty and flagrant abuse of fundamental principles of law or justice.

7. Now to the facts of the present case. A scanning of the Cause Titles of all the four suits clearly shows that the parties are not common to all

the four suits. In fact in the suits pending before the learned Civil Judge (Junior Division), Puri neither Gopinath Mohanty nor his LRs, who are parties in C.S. No.94 of 2011 pending before the learned Civil Judge (Senior Division), Puri is/are parties. Similarly, petitioner no.1, who happens to be defendant no.1 in C.S. No.824 of 2014 pending in the court of learned Civil Judge (Senior Division), Puri is not a party to any of the two suits pending in the court the learned Civil Judge (Junior Division), Puri. Further, the Administrator, Sri Jangannath Temple, Puri, who is defendant no.5 in C.S. No.81 of 2004 pending before the learned Civil Judge (Junior Division), Puri is not a party in either of two suits pending before the learned Civil Judge (Senior Division), Puri. Thus, it cannot be said that the parties in the suits pending before the learned Civil Judge (Senior Division), Puri are same as that of the parties in the two suits pending before the learned Civil Judge (Junior Division), Puri.

Secondly, a perusal of the prayers made in the four civil suits would clearly show that the prayers of two civil suits pending in the court of learned Civil Judge (Senior Division) are totally different from the prayers of two civil suits pending before the learned Civil Judge (Junior Division). In fact while the subject matter of two civil suits pending before the learned Civil Judge (Junior Division), Puri relate to performance of Mudra Sevapali in Jagannath Temple; the prayer in C.S. No.94 of 2011 relates to Akhanda Mekap Seba, admittedly a different type of Seba. The other civil suit, i.e., C.S. No.824 of 2014 pending in the court learned Civil Judge (Senior Division), Puri is a suit for partition. Therefore, the cause of action

for suits pending in the court of learned Civil Judge (Senior Division) are different than that of the two civil suits pending before the learned Civil Judge (Junior Division), Puri. Thus, the subject matter of all the four suits can not be said to be one though one of the issues may be common.

Thirdly, in T.R.P. No.20 of 2015 the LR's of Gopinath Mohanty, who have been arrayed as parties in C.S. No.94 of 2011 as defendants have not been made parties in T.R.P. No.20 of 2015. A perusal of relevant provision of Section 24 of the Code of Civil Procedure as quoted shows that a District Court can exercise its jurisdiction on the application of any of the parties and after notice to the parties, which obviously mean that notice has to be issued to all the parties, who have been arrayed as parties in different suits. Here, admittedly, the LR's of Gopinath Mohanty were not made parties. It is well settled that when an application for transfer is made by a party, the Court is required to issue notice to the other side and hear the parties before directing transfer. This has been laid down in the case of **Jitendra Singh v. Bhanu Kumari and others** reported in **AIR 2008 SC 2987**.

Fourthly, C.S. No.81 of 2004 pending before the learned Civil Judge (Junior Division), which is being analogously with T.S. No. 89/410 of 2006/1995 has been directed to be disposed of as expeditiously as possible vide order of this Court dated 23.4.2014 passed in W.P.(C) No.11366 of 2013. Both the suits are pending before the learned Civil Judge (Junior Division), Puri for more than ten years and are in the midst of hearing. In contrast two suits pending before the learned Civil Judge

(Senior Division), Puri are of 2011 and 2014 origin, where hearing has not commenced.

8. In such background, this Court has to examine the contention of Mr. Bose. He submitted that since one of the issues in all four suits was whether opposite party no.2 was the son of Jagannath Mudra or not, the prayer for transfer of both the suits pending before the learned Civil Judge (Junior Division), Puri to the court of learned Civil Judge (Senior Division), Puri for consideration along with both C.S. No.94 of 2011 and C.S. No.524 of 2014 pending before the learned Civil Judge (Senior Division), Puri should have been allowed as otherwise there might be conflicting decisions by two honourable courts. This contention does not appeal to this Court because as indicated earlier the subject matters and prayers made in two suits pending before the learned Civil Judge (Senior Division), Puri are different from the subject matters and prayers made in two suits pending before the learned Civil Judge (Junior Division), Puri. Further, parties to the two suits pending before the learned Civil Judge (Junior Division), Puri are not the same as parties to the two suits pending before the learned Civil Judge (Senior Division), Puri. Moreover in T.R.P. No.20 of 2015, the petitioners have not arrayed LR's of Gopinath Mohanty as parties, which was a fatal flaw. Further, transfer of two old suits pending in the court of the learned Civil Judge (Junior Division), Puri to the court of learned Civil Judge (Senior Division), Puri would further delay their disposal, though one of such suits has been targetted by this Court. In such facts and circumstances, merely because only one

of the issues is common to all suits, the learned District Judge, Puri has done no wrong in not allowing the prayer of the petitioners to transfer of two suits pending before the learned Civil Judge (Junior Division), Puri to the court of the learned Civil Judge (Senior Division), Puri. With regard to apprehension relating to conflicting decisions, it can only be said that once the issue of sonship of opposite party no.2 is decided by the learned Civil Judge (Junior Division), Puri in the decade old suits pending before it, where hearing is on; the finding on such an issue can be made use of in the suits of the years 2011 and 2014 pending before the learned Civil Judge (Senior Division), Puri, where hearing is yet to begin. Therefore, the argument relating probable conflict of decisions of two courts does not appeal to this Court under the present facts and circumstances of the case.

9. For all these reasons, keeping in mind the well settled principles with regard to exercise of powers under Article 227 of the Constitution of India as laid down by the Hon'ble Supreme Court, this Court comes to a conclusion that there is no error apparent on the face of the impugned order and no grave injustice has been to the petitioners by dismissal of their T.R.P. No.20 of 2015 by the learned District Judge, Puri.

10. The Civil Miscellaneous Petition is accordingly dismissed. No costs.

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(Biswajit Mohanty, J.)