

**A.F.R.**

## **HIGH COURT OF ORISSA: CUTTACK**

**C.M.P. No.125 of 2017**

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

-----  
Agana Parida ..... Petitioner  
---versus---  
Saraswati Parida and others ..... Opp. Parties

For Petitioner : Mr.S.K. Dwibedi, Advocate  
For Opp. Parties : Mr. D.P. Mohanty, Advocate  
(For O.P. No.1)

### **J U D G M E N T**

**P R E S E N T:**

**THE HON'BLE DR. JUSTICE A.K. RATH**

-----  
Date of Hearing:28.02.2017 | Date of Judgment:28.02.2017  
-----

**Dr. A.K. Rath, J.** This petition seeks to lacinare the order dated 22.12.2016 passed by the learned 2<sup>nd</sup> Addl. Civil Judge (Sr. Divn.), Balasore in C.S. No.881/2012 vide Annexure-1. By the said order, learned trial court allowed the application of the defendant no.1 under Order 18 Rule 16 C.P.C.

**02.** The petitioner as plaintiff instituted the suit for declaration, partition of the suit schedule property and permanent injunction impleading the opposite parties as defendants. Pursuant to issuance of summons, the defendant no.1 (opposite party no.1 herein) entered appearance and filed written statement denying the assertions made in the plaint. While the matter stood thus, she filed an application under Order 18 Rule 16 C.P.C. seeking leave of the

court to adduce evidence. It is stated that she is an old woman of 80 years. She is a paralysis patient and bed ridden. Her grandson is residing at Visakhapatnam. For her better treatment, she intends to leave the jurisdiction of the court and stay at Visakhapatnam. It is further stated that due to her old age, her memory fails. Another petition was filed under Order 26 Rule 1 C.P.C. to examine her by a commission. The plaintiff filed objections in both the petitions.

**03.** Learned trial court came to hold that the defendant no.1 is an old woman and about to leave the jurisdiction of the court for better treatment at Visakhapatnam. Held so, the learned trial court allowed both the petitions.

**04.** Mr. Dwibedi, learned counsel for the petitioner submits that the duty is cast upon the learned trial court to assign reasons while deciding the application under Order 18 Rule 16 C.P.C. Since no reason has been assigned, the impugned order is liable to be quashed. Further, the defendant no.1 has not produced any detail particulars of her illness. He further submits that the defendant no.1 in her written statement stated that she is undergoing treatment at SCB Medical College, Cuttack at some point of time. He cites decision of this Court in the case of *Kamalakanta Parida and another vs. Sri Saroj Badan Parida and others*, 2013(I)OLR-412 and *Bishnupriya Devi vs. Ashoka Crokeries Ltd. & another*, 2014 (II) ILR-CUT-815.

**05.** Per contra, Mr. Mohanty, learned counsel for the opposite party no.1 submits that the defendant no.1 is an old woman of 80 years. She is a paralysis patient. Her grandson is residing at Visakhapatnam. For better treatment, the defendant no.1 intends to go there. The applications were filed for her examination by a commission and seek to leave the jurisdiction of the court. He

further submits that in the meantime commission has been appointed and examined the defendant no.1.

**06.** Order 18 Rule 16 C.P.C., which is the hub of the issue, reads as follows:

**"16. Power to examine witness immediately.—**

(1) Where a witness is about to leave the jurisdiction of the Court, or other sufficient cause is shown to the satisfaction of the Court why his evidence should be taken immediately, the Court may, upon the application of any party or of the witness, at any time after the institution of the suit, take the evidence of such witness in manner hereinbefore provided.

(2) Where such evidence is not taken forthwith and in the presence of the parties, such notice as the Court thinks sufficient, of the day fixed for the examination, shall be given to the parties.

(3) The evidence so taken shall be read over to the witness, and, if he admits it to be correct, shall be signed by him, and the Judge shall, if necessary, correct the same, and shall sign it, and it may then be read at any hearing of the suit."

**07.** On a bare reading of the said provision, it is manifest that the party making an application must satisfy the court that the witness is about to leave the jurisdiction of the court or assign other sufficient cause for taking his evidence immediately.

**08.** In the instant case, there is no denial to the fact that the defendant no.1 is an old woman of 80 years and she is suffering from paralysis. As would be evident from the petitions, she is about to leave the jurisdiction of the court for her better treatment at Visakhapatnam where her grandson is residing. Learned trial court has assigned the reasons while allowing the application.

**09.** The decisions cited by Mr. Dwibedi, learned counsel for the petitioner, are of no avail. In *Kamalakanta Parida and another* (supra), the order of the learned trial court allowing the application

filed under Order 18 Rule 16 C.P.C. has been quashed since the learned trial court has not assigned any reason. In *Bishnupriya Devi* (supra), learned trial court allowed the petition on the ground that there are certain manifest discrepancies regarding the age of defendant no.2, her signature and L.T.I. appearing in the sale deed. This Court held that the same are not germane for consideration in an application under Order 18 Rule 16 C.P.C.

**10.** On a cursory perusal of the decisions, it is evident that both the decisions are distinguishable on facts. In *State of Orissa vs. Sudhanu Sekhar Mishra and others*, AIR 1968 SC 647, the Constitution Bench held that a decision is only an authority for what it actually decides. What is of the essence in a decision is its ratio and not every observation found therein nor what logically follows from the various observations made in it. It is not a profitable task to extract a sentence here and there from a judgment and to build upon it.

**11.** The reasons assigned by the learned trial court cannot be said to be perfunctory or flawed warranting interference of this Court under Article 227 of the Constitution of India.

The petition is dismissed. No costs.

.....  
**Dr. A.K. Rath,J.**