

Mani Dhal Vs. Padma Charan Dhal and ors.

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Court : Orissa

Decided On : May-01-1984

Reported in : AIR1984Ori169; 57(1984)CLT546; 1984(I)OLR467

Judge : R.C. Patnaik, J.

Acts : [Code of Civil Procedure \(CPC\) , 1908](#) - Order 18, Rule 2 and 2(4) - Order 39, Rule 1

Appeal No. : Civil Revn. No. 732 of 1960

Appellant : Mani Dhal

Respondent : Padma Charan Dhal and ors.

Advocate for Def. : S. Misra-2, ;S. Mantry and ;R.C. Rath, Advs. (for Nos. 1 and 6)

Advocate for Pet/Ap. : M. Patra, ;B. Dagara, ;G.C. Mohapatra and ;M.R. Patra, Advs.

Disposition : Petition allowed

Judgement :

ORDER

R.C. Patnaik, J.

1. This revision is directed against an order passed by the learned Munsif, Kendrapara, disallowing the motion of the plaintiff-petitioner under Order 18, Rule 2 (4), Civil P. C., seeking permission to prove certain documents after closure of the evidence of both the parties.

2. The petitioner filed Title Suit No. 76 of 1979 for declaration of title, confirmation of possession and in the alternative for recovery of possession and for permanent injunction. He alleged that the defendants and he were the descendants of the common ancestor. Title Suit No. 109 of 1952 was filed by the father of defendants 3 and 4 against the father of defendants 1 and 2 and the plaintiff. The parties reached an amicable settlement and the suit was disposed of on compromise, allotting specific properties. Title to specific properties is traceable to the compromise decree. The defendants, however, in violation of the compromise decree, threatened to interfere with the enjoyment of the property allotted to and in the possession of the plaintiff. The threats were the cause of action for the suit. Defendants 1 and 6 joined contest and filed their written statement denying the compromise and the assertions made by the plaintiff-petitioner on the basis of the compromise decree.

3. The compromise decree, therefore, is the sole foundation of the plaintiff's case and the most crucial document in the adjudication of the controversies.

Two proceedings under Order 39, Rule 1, Civil P. C., had been initiated--one at the instance of the plaintiff and the other at the instance of defendant 6. The petition for compromise was filed as early as on 26-3-1979 along with the plaint. The hearing of the suit was taken up on 16-9-1980 and parties closed their evidence on 17-9-1980. The case was posted for arguments. On 12-11-1980, the plaintiff filed an application for acceptance of certain documents. The following order was passed.

'..... Petition is allowed and the documents are accepted subject to proof and relevancy. Heard argument in part. Exts. 1, 2, 3, 3/a, 4 and 4/a are marked. Call on 13-11-80 for further arguments....'

In the list of documents, the petition for compromise was shown to have been admitted without objection and marked as Ext. 2. On 14-11-1980, defendants 1 and 6 filed a petition to delete Ext. 2 from the list on the ground that the petition for compromise, not being a public document, should not have been admitted into evidence without proof and the order dated 12-11-1980 clearly stated that the document was accepted subject to proof. To meet the situation arising out of the objection raised by defendants 1 and 6 and the state of the record the plaintiff filed an application under Order 18, Rule 2 Civil P. C., for an opportunity to prove the document by adducing evidence. The learned Munsif allowed the application filed by defendants 1 and 6 deleting Ext. 2 on the ground that the petition for compromise being a private document did not prove itself and could not automatically get marked as exhibit. The learned Munsif also disallowed the prayer of the plaintiff for an opportunity to prove the compromise petition. The reasons for the rejection were that the motion was made at a belated stage and there was no 'good reason' to afford an opportunity.

4. Sub-rule (4) of Rule 2 of Order 18 was added by the Civil Procedure Code (Amendment) Act, 1976. Even before the amendment, many of the High Courts had amended the rule empowering the court to direct any party to examine any witness at any stage for reasons to be recorded by the court in writing. The amendment is in furtherance of the cause of justice and for preventing miscarriage of justice in certain cases. The provision confers a discretionary jurisdiction on the court. Jurisdiction is invoked at a stage where a party cannot adduce evidence as of right having regard to sequence of recording of evidence. Being a discretionary jurisdiction, it has to be exercised cautiously and with circumspection. Exceptional must be circumstances and few the occasions. The exercise of the power has to be judicious and not mechanical.

5. In this case, the motion was made for adducing further evidence at the close of the evidence by both the sides. Doubtless, it was at a belated stage Indisputably the plaintiff has not been very diligent in the prosecution of his case. A poor rustic litigant, unversed in law and ignorant of the process of the court relies on his counsel, his expertise, for the proper prosecution of his case. On his instructions, the pleadings were struck. The certified copy of the compromise petition, which

was obtained in 1978, was before the counsel and was filed in court on the date the suit was filed. The same was taken back by the plaintiff for some purpose and was again re-filed on 13-3-1980 before the miscellaneous proceedings under Order 39 were heard. Recording of evidence was commenced on 16-9-1980.

6. Having entrusted the matters to a learned counsel, what further could be expected from an illiterate rustic person, who does not know how to sign his name but affixes his thumb impression, in furtherance of his cause? What further good reasons could there be? It was for his counsel to guide and take appropriate steps for the proof of the document. It is no doubt true that the counsel is the agent of the party, but he is also a minister of justice. If law is powerless to relieve a party who has been left in the lurch by his counsel either due to the latter's inaction or lack of diligence, should the law be enforced mechanically without concern for justice. The quest led to the amendment by the various High Courts. The wisdom thereof was perceived by the Parliament and Sub-rule (4) was inserted by the Civil Procedure Code (Amendment) Act, 1976. The object is dispensation of justice and not disposal of a case. Therefore, ample discretion has been vested in the court to relieve unwary travellers whom destiny has thrust into the maze of procedure. Where the attempt is mala fide, different considerations arise. Mala fides forfeit entitlement to discretion. Where the conduct is bona fide, the doors of discretion are ajar.

7. With these prefatory words, I proceed to view the matter. No doubt, the motion was made at a belated stage but the compromise is the foundation of the plaintiff's case. Demolition of the compromise is the object of the defendants. The controversies revolve round the compromise. Without the compromise petition, there may be an exercise to reach at a result, but that would not be a sound exercise.

8. In my opinion, the discretion which is vested in court by Sub-rule (4) of Rule 2 of Order 18 (inserted by the High Courts and later by Parliament by the Amendment Act, 1976, the Madras High Court amended as early as in 1926, this Court in 1954 and the Parliament in 1976) is to meet a situation like the present where justice would otherwise be a casualty.

9. I would, therefore, vacate the order and permit the plaintiff to adduce evidence to prove the compromise petition according to law. Necessarily the defendants shall have an opportunity to lead evidence in rebuttal. The contesting defendants should, however, have costs by way of compensation for the belated move. I assess the same at Rupees 50/- which shall be paid to the contesting defendants within such time as may be fixed by the trial court.

10. In the result, the revision is allowed but without costs of this Court.

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