

Dillip Kumar Sahu Vs. State and ors.

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Court : Orissa

Decided On : Dec-11-1990

Reported in : 1991(I)OLR199

Judge : S.C. Mohapatra, J.

Acts : [Code of Civil Procedure \(CPC\) , 1908](#) - Order 33, Rule 1

Appeal No. : Misc. Appeal No. 243 of 1990

Appellant : Dillip Kumar Sahu

Respondent : State and ors.

Advocate for Def. : Debasis Das, Addl. Standing Counsel, ;R.K. Mohapatra, assisted by ;C.R. Ray, B. Routray, R.C. Das and R.K. Dash (For respondents 2 and 3)

Advocate for Pet/Ap. : A.K. Mahakud and U.K. Lenka

Disposition : Appeal allowed

Judgement :

S.C. Mohapatra, J.

1. This is an appeal under Order 43, Rule 1 (na) Civil Procedure Code against an order rejecting. an application for permission sue as an indigent person.

2. Appellant ha Student in Engineeing College He filed a suit against State of Orissa, Sambalpur Universrty and controller of Examination of that University for damages of Rs. 1,00,000/-, on the ground that he is Unable to pay the court-fee, he fided application to be permitted to sue as an indigent person as provided under Order 33, rule1 C. P. C. In paragraph of the application, he slated that he Is not in possession of sufficient means other than property described in Schedule to enable him to pay the fee prescribed for by law. This application was objected to by the University and the Controller where in paragraph 2, it Is stated that the contention made in paragraph 2 of the application is not known to them.

3. Appellant examined himself in the enquiry by the Court. No evidence was led on behalf of respondents. On the finding that appellant has suppressed the material facts with respect to movable and immovable properties of his parents, trial Court rejected the petition.

4. In 45 (1978) C.L.T. 431 (Kara Satnami v. Dhaneswar) Patel and another)it has been held that possession of substantial property by the next friend of a minor would not be a ground to reject the petition. In 1987 (II) OIR 545 (Santosh Samal v. Baja Sehilu and others) it has been held that property of the mother who as guardian of the minor filed the suit should not be reckoned for considering indigency of minor plaintiff. In view of the principles laid down in the aforesaid two decisions, non-disclosure of movable and Immovable properties of the parents cannot be a ground to reject the petition for permission to sue as indigent person.

5. Mr. R. K, Mohapatra, learned counsel for the contesting respondents submitted that in' cross-examination appellant as P. W. 1 admitted that they have a house at Mohantypada but he frankly stated that he does not know if value of the house would be more than two lakhs rupees. from. this I am not inclined to draw an inference that the house is a joint family house in which applicant has share. If same evidence would have been led by respondents' in this matter, I might Have considered the effect of such statement. A benevolent provision like Order 3 to give benefit' to plaintiffs to sue as indigent person ought not to be defeated by drawing inferences which cannot be the only inferences When there is no clear evidence that the hous e is a joint family house. State of Orissa ' has not made any

enquiry to contest the application. Learned Additional Standing Counsel has not been able to bring to my notice any material to draw an inference that plaintiff is not an indigent person.

6. Order 33, Rule 5, C. P. C. provides for grounds on which an application can be rejected. Except Rule 5 (b) no other ground has been found to have been satisfied. Finding that appellant is not an indigent person is not supportable on the materials on record. Accordingly, the impugned order is to be reversed and appellant is to be permitted to sue as an indigent person.

7. In the result appeal is allowed result, appeal is allowed. No costs.

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