

Artabandhu Samal Vs. Civil-judge (Jr. Division) and ors.

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Court : Orissa

Decided On : Jun-30-1999

Reported in : 88(1999)CLT694; 1999(II)OLR379

Judge : A. Pasayat, Acting C.J. and ;B.P. Das, J.

Acts : [Code of Civil Procedure \(CPC\), 1908](#) - Order 6, Rule 17

Appeal No. : Original Jurisdiction Case No. 11943 of 1998

Appellant : Artabandhu Samal

Respondent : Civil-judge (Jr. Division) and ors.

Advocate for Def. : Manoranjan Mishra, ;B.B. Ray, N. Rout, R.B. Singh, D.M. Parida and R.K. Mohanty

Advocate for Pet/Ap. : A.K. Mishra-2, S.K. Mishra and K.C. Khuntia

Judgement :

A. Pasayat, Acting C.J.

1. Petitioner's application for amendment in terms of Order 6, Rule 17 of the Civil Procedure Code, 1908 (in short, 'the Code') having been rejected by learned Civil Judge (Junior Division). Jajpur, this writ petition has been filed.

2. Present opp. party No. 2 filed Execution Misc. Case No. 13 of 1997 in the Court of Civil Judge (Junior Division), Jajpur questioning petitioner's election as Sarpanch of Ratlanga Gram Panchayat of Bari Block in the election held under the Orissa Gram Panchayat Act, 1965 (in short 'the Act') and the rules framed thereunder. His stand was that though his nomination had been accepted, no symbol was allotted to him and his name was not included in the ballot paper. According to him, four persons had filed their nomination papers for the post of Sarpanch. The election was held on 18.1.1997. As name of election petitioner was not included in the ballot paper and no symbol was allotted to him, he could not participate in the election, and the writ petitioner was declared elected on 29.1.1997. Written statement was filed by the writ petitioner in the Election Misc. Case. Subsequently, a petition styled under Order 6, Rule 17 and Section 151 of the Code was filed by him. It is to be noted that in the original written statement, he had taken the stand that election petitioner had withdrew his nomination and therefore, there was no requirement for including his name in the ballot paper. By the proposed amendment it was intended to state that opp. party No. 6 in the election petition was nephew of the election-petitioner. With a view to take revenge of the defeating last election against the writ petitioner, election petitioner withdrew his nomination in favour of opp. party No. 6 with an intention to defeat the writ petitioner combinedly. The election petitioner wilfully, knowingly and without any objection allowed the election to be held on scheduled date and time. Election was held and unfortunately the voters refused to accept opp. party No. 6 in the election petition, as a result of which he was defeated and the writ petitioner was elected. In paragraph 9(d)(e) the word 'opposite party' was intended to be corrected as

'opposite party No. 3'. Learned Civil Judge (Jr. Division), Jajpur rejected the prayer on the ground that the amendment sought for in fact introduced a new case and was not related to the pleadings of the parties. It was fully irrelevant and unnecessary, as it had nothing to do to decide the real dispute.

3. Mr. S. K. Mishra, learned counsel for the petitioner submitted that what was intended to be done was to strengthen the pleadings already made, and the learned trial Judge is not justified in holding that the amendment if allowed, would change the nature and character of the suit.

Learned counsel appearing for the election-petitioner (opp. party No. 2 in the present writ petition) submitted that the averments sought to be introduced are intended to introduce a new case.

4. It is well settled position in law that prayers for amendment are to be liberally dealt with to avoid multiplicity of proceeding and effort should be to see that the real issues are adjudicated. But at the same time it is to be borne in mind that where new aspects are sought to be introduced which would change the substratum of the dispute, the same cannot be allowed. On a consideration of the pleadings already made and sought to be introduced by way of amendment, it is seen that a new arena of dispute was sought to be introduced and the learned trial Judge was justified to refuse the prayer for amendment. At this juncture, it is necessary to refer paragraph-2 of the application for amendment, where it was stated that aspects sought to be introduced by way of amendment came to applicant's knowledge during hearing of the case and were not known earlier and therefore was sought to be introduced. This plea was not substantiated. However, learned trial Judge ought to have allowed the prayer for substitution of expression 'opposite party' by 'opposite party No. 3' as it was of a formal nature.

The writ petition is accordingly disposed of.

B.P. Das, J.

5. I agree.

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