

4 April 2000

C.A. No. 1267 of 1988

The Order of the court was as follows:

1. This appeal is an illustration as to how procedural bottlenecks could thwart real justice to the parties and the partition suit of 1975 can be kept still lingering at the threshold on the question of payment of proper court fees and the pecuniary jurisdiction of the competent court to try it.
2. A few relevant facts leading to this appeal deserve to be noted at the outset to highlight the aforesaid observation of ours.
3. The appellant as well as Respondent Nos. 1 to 4 as co-plaintiffs filed a civil suit being O. S. No. 67 of 1975-I in the Court of learned Munsif, Khurda in Orissa State. In that suit the five plaintiffs claimed partition and separate possession of their shares in the suit properties. In the present appeal we are not concerned with the merits of the suit. The original defendant No. 3 who is Respondent No. 5 before us contested the suit on various grounds including one of pecuniary jurisdiction of the trial Court to entertain the suit. Ultimately, the trial Court took up the suit overruling the objection of defendant No. 3 about the Court's pecuniary jurisdiction to entertain the suit. The trial Court passed a preliminary decree for partition against defendant No. 3 on contest. This decree of the trial Court resulted into an appeal at the instance of Respondent No. 5 herein - the original defendant No. 3 before the Court of Additional Subordinate Judge, Bhubaneswar. Learned first appellate Judge after hearing the contesting parties took the view that the trial Court had no pecuniary jurisdiction to entertain the suit. On that ground alone the judgment and decree of learned Munsif, Khurda were set aside by order dated 17-3-1980.
4. The plaint was ordered to be returned to the appellant who was respondent No. 1 and respondent Nos. 1 to 4 who had been joined as co-respondents 2 to 4 in that appeal, for presentation to the proper Court. This order of the first appellate Court i.e. the Court of learned Additional Sub-Judge, Bhubaneswar was carried in appeal being Miscellaneous Appeal No. 214 of 1980 before the High Court. The said Miscellaneous Appeal came up for hearing before R. N. Misra, C. J. (as his Lordship then was) who by order dated 17-4-1981 dismissed the same and confirmed the order of the first appellate Court meaning thereby the direction to the appellant and respondent Nos. 1 to 4 was maintained. The appellant moved a review petition before learned Judge who dismissed the same on 15-1-1982. Learned Judge observed in the said order that the consequence of dismissal of the Misc. Appeal is that the plaintiff will have to present his plaint in the appropriate Court. It is always open to him to ask for transposition in the proceeding in the Court below. Whether transposition would be granted is a matter of discretion.
5. Thereafter, the appellant-plaintiff instead of getting the plaint returned to him for presentation before proper Court went to the trial Court i.e. the Court of learned Munsif. He requested learned Munsif by his Miscellaneous Application No. 13 of 1982 under O. 1, R. 10 read with Section 151 of the Code of Civil Procedure to permit him to transpose plaintiff Nos. 2 to 5 as Defendant Nos. 4 to 7. He also applied on 25-4-1981 to learned trial Court i.e. Munsif, Khurda to return the plaint under O. 7, R. 10, C. P. C. for presentation of the suit to the proper court. Thereafter, on 6-9-1982 the appellant withdrew that application and prosecuted only his application under O. 1, R. 10, C. P. C.
6. Under these circumstances, learned Munsif, Khurda by his order dated 4-10-1982 came to the conclusion that as he had no pecuniary jurisdiction to entertain this suit as held by the appellate Court he could not grant permission to the plaintiff to transpose the remaining plaintiffs as defendants. It is this order which was carried in revision before the High Court. Learned Judge of the High Court, R. C. Patnaik, J. (as he then was) rejected the revision. It is that order of the High Court which is made subject matter of this appeal on grant of special leave.
7. A bare perusal of the aforesaid facts clearly indicates that the plaintiff must thank himself for finding himself in this procedural whirlpool and for suffering from the predicament of his suit for partition filed as early as in 1975 being not still processed on merits by any competent court in accordance with law. After the decision of the High Court in Miscellaneous Appeal, it was for him to have applied to the learned trial Judge to get the plaint returned for presentation to the proper Court which would have been the correct procedure. Instead of doing so, even while earlier applying for the same relief but having withdrawn the same, he merely pressed the application under O. 1, R. 10, C. P. C. for being granted transposition of plaintiffs Nos. 2 to 5 as defendants Nos. 4 to 7. That application obviously could not be granted by the trial Court which

had no pecuniary jurisdiction to entertain the suit itself.

8. Under these circumstances, two courses would now be open at this stage. Firstly, the order of the trial Court as confirmed by the High Court can be sustained and the plaint may be ordered to be returned to the plaintiff for presentation to the competent court namely, the Court of learned sub-Judge, Bhubaneswar. But then appellant's application under O. 1, R. 10, C. P. C. can obviously be moved before that court as clearly indicated earlier by the order of the High Court in review proceedings noted above. Once that happens and if that application is granted by the Court of learned sub-Judge then again the suit will have to go to the Court of learned Munsif wherein on payment of one set of court-fees by the sole plaintiff the suit can proceed on merits. This would be a zig zag procedure which will be purely technical without serving substantial course of justice for all contesting parties.

9. Under the circumstances a better course as indicated herein deserves to be adopted. In order to short-circuit the procedure which has already delayed the decision of suit No. O. S. No. 67 of 1975-I and to serve the ends of justice we deem it fit under Article 142 of the Constitution of India to pass the following order. While sustaining the order of the trial Court as confirmed by the High Court, the appellant is permitted to transpose the original plaintiffs Nos. 2 to 5 as defendants Nos. 4 to 7. The plaint in O. S. No. 67 of 1975-I shall stand amended accordingly. The appellant shall carry out the aforesaid amendment in the plaint which we are told is lying in the Court of Munsif, Khurda, within eight weeks from the receipt of a copy of this order by the trial Court. Once that amendment is carried out the appellant who will now remain as sole plaintiff will have to pay the proper court-fees and if there is any short-fall, he will have to make good of the same as he will be treated as sole plaintiff.

10. After this amendment is carried out and proper court fees are paid learned trial Judge who will then admittedly have pecuniary jurisdiction will proceed with the suit, O. S. No. 67 of 1975-I in accordance with law and dispose of the same as expeditiously as possible and preferably within six months from the date on which the amendment is carried out by the appellant in the plaint as permitted by us by our present order.

11. It is also made clear that if the amendment is not carried out in the light of the concession given by us to the appellant, the suit shall stand rejected on the ground of absence of pecuniary jurisdiction and also for non-prosecution. Office is directed to send a copy of this order to the Court of learned Munsif, Khurda for information and necessary action. The appeal is accordingly allowed to the aforesaid extent. There will be no order as to costs.

Appeal partly allowed.