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IN THE HIGH COURT OF ORISSA AT CUTTACK

CMP No. 1247 OF 2022

(An application under Article 227 of the
Constitution of India)

Anantram Bhotra

.....

Petitioner

-Versus-

Pratima Bhotra and others

.....

Opp. Parties

Advocates appeared:

For Petitioner : Mr. Debasis Tripathy, Advocate
Mr. M.Panigrahi, Advocate

For Opp. Parties : Mr. Basudev Mishra, Advocate

CORAM :
MR. JUSTICE K.R. MOHAPATRA

Heard and disposed of on 28.03.2024

JUDGMENT

सत्यमेव जयते

K.R. Mohapatra, J.

1. This matter is taken up through hybrid mode.
2. Order dated 17th October, 2022 (Annexure-5) passed by learned Senior Civil Judge, Nabarangpur in C.S. No.17 of 2013 is under challenge in this CMP, whereby written statement filed by the legal heirs of deceased Defendant No.1 has been accepted.
3. Mr. Tripathy, learned counsel submits that the Petitioner as Plaintiff filed a suit for declaration that the Registered Sale Deed dated 16th January, 1969 is null and void, declaration that the ROR vide Khata No.56 of Bangapalli Mouza in the name of

the Defendants is also null and void and also to declare right, title and interest of the Plaintiffs over the suit land as well as for permanent injunction. During pendency of the suit, Defendant No.1 died and was substituted by his legal heirs, namely, Opposite Party Nos. 1 to 4. Before death, Defendants had filed a written statement. But, the legal heirs of Defendant No.1 on being substituted filed another written statement taking independent stand describing a different story. Hence, the Plaintiff-Petitioner filed an application on 17th January, 2019 with a prayer not to accept the said written statement. Learned trial Court without considering the petition in its proper perspective, dismissed the same and accepted the written statement filed by the legal heirs of Defendant No.1 subject to payment of cost of Rs.300/-.

4. While discussing the case of the parties, learned trial Court has categorically observed as under:

“On perusal of the concerned additional written statement filed on dated 27.11.2018 it is appeared that the legal representatives of the deceased defendants have pleaded a new fact that, Ghenua had three sons namely, Dasmu, Narasing and Birasingh whereas Saradu was the only son of Birasingh contrary to the pleading of the plaintiff that Saradu was the only son of Dasmu and it was also not specifically denied by the deceased defendants in their earlier pleadings.”

4.1 He, therefore, submits that the additional written statement filed by the substituted Defendants with an independent stand, which was not available in the original written statement, should not have been accepted in view of the provision under Order XXII Rule 4(2) CPC. In support of his submission, Mr. Tripathy, learned counsel for the Petitioner

relied upon the case of *Niranjan Sahu –v- Gauri Sahu and others*, reported in 2016 (Supp.-II) OLR 245, wherein this Court has held as under:

“10. From the decisions cited (supra), it is pellucid that sub-rule (2) of Rule 4 of Order 22 authorizes the legal representative of a deceased defendant to file an additional written statement raising all pleas which the deceased-defendant had or could have raised except those which were personal to the deceased-defendant or respondent. If the legal representative has an independent right, title and interest over the property, then he has to get himself impleaded in the suit as a party defendant and set up his own independent right, title and interest or challenge the decree that may be passed in the suit. He cannot take contrary plea diametrically opposite to the deceased-defendant. The rights which the dead man can no longer own or exercise in propria persona, and the obligations which he can no longer in propria persona fulfil, he owns, exercises, and fulfils in the person of a living substitute. To this extent, it may be said that the legal personality of a man survives his natural personality, until his obligations being duly performed, and his property duly disposed of, his representation among the living is no longer called for. When a party to a suit dies and his legal representatives are substituted, the rights and liabilities of the original party have to be considered, but not those of legal representatives. It is not permissible on the part of the legal representative to make a prayer to ignore the written statement filed by the deceased-defendant and accept his written statement, which is a complete departure from the written statement filed by defendant no.2.”

5. He, therefore, submits that if the legal representatives claim to take any independent stand, they have to take steps to be impleaded as parties under Order 1 Rule 10 CPC. Being substituted under Order XXII Rule 4(2) CPC, they are bound by the pleadings of the party to whom they are representing. They cannot take any independent stand in filing their additional written statement. Learned trial Court however failed to

appreciate the same and observed that merely because there was no specific denial to the pleading of the Plaintiff by the original Defendants, the substituted legal representatives could not be prevented to file any independent written statement which is neither a new nor a contradictory pleading. It is his submission that such an observation is not sustainable in the eyes of law and is liable to be set aside.

6. Mr. Mishra, learned counsel for Opposite Parties vehemently objects to the same. It is his submission that since the Opposite Parties have been impleaded as Defendants, they have right to file their written statement independently. He also relied upon the case of ***Sumtibai and others –v- Paras Finance Co. REGD. Partnership Firm***, reported in AIR 2007 SC 3166, in which it is held as under:

“4. The appellants are the legal representatives of late Kapoor Chand. A suit was filed by the respondent herein against Kapoor Chand for specific performance of a contract for sale. It was alleged that Kapoor Chand had entered into an agreement to sell the property in dispute to the plaintiff- respondent, M/s. Paras Finance Co. In that agreement Kapoor Chand stated that the property in dispute was his self acquired property. During the pendency of the suit Kapoor Chand died and his wife, sons etc. applied to be brought on record as legal representatives. After they were impleaded they filed an application under Order 22 Rule 4(2) read with Order 1 Rule 10 CPC praying inter alia, that they should be permitted to file additional written statement and also be allowed to take such pleas which are available to them. The trial court rejected this application against which a revision was filed by the appellant which was also dismissed by the High Court. Hence this appeal by special leave.”

5. We are of the opinion that a party has a right to take whatever plea he/she wants to take, and hence the view taken by the High Court does not appear to be correct.”

7. He, therefore, submits that a party has a right to take whatever plea he/she wants to take in the written statement. It is further submitted that the plea taken by the substituted Defendants is not contradictory to the stand taken in the original written statement. Thus, the Plaintiffs are no way prejudiced for acceptance of the additional written statement filed by the substituted Defendants-Opposite Party Nos.1 to 4. He, therefore, submits that learned trial Court has committed no error in rejecting the petition filed by the Petitioner with a prayer not to accept the written statement filed by the substituted Defendants.

8. Taking note of the submissions made by learned counsel for the parties, this Court is of the considered opinion that the legal representative of a deceased party only steps into the shoes of the deceased. They are legally bound by the pleadings taken by the deceased. If any party wants to take an independent stand, he has to seek permission of the Court to be impleaded as a party to the suit by filing an application under Order 1 Rule 10 CPC. The legal representative may, however, seek permission for amendment of the pleading filed by the deceased. In the instant case, no such application has been filed by the legal heirs of the Defendant No.1 either to be impleaded as parties under Order 1 Rule 10 CPC or to amend the pleading in the written statement.

9. Order XXII Rule 4 CPC provides the procedure for substitution of legal representative in case of death of sole

defendant or several defendants in a suit. Sub-rule (2) of Rule 4 provides that “*any person so made a party may make any defence appropriate to his character as legal representative of the deceased defendant.*” In view of the provision under Order XXII Rule 4(2) CPC, the substituted legal representative(s) can take a defence appropriate to its/their character as a legal representative. Thus, it is inappropriate for them to take an independent stand by filing an additional written statement. In the case of *Sumtibai and others* (supra) relied upon by Mr. Mishra, learned counsel for Opposite Parties, an application was filed under Order 1 Rule 10 read with Order XXII Rule 4(2) CPC. The said application was rejected by learned trial Court. Hon’ble Supreme Court adjudicating the matter observed that the parties are at liberty to take any stand as they wish. The ratio decided in the said case is not applicable to the present one, as the parties had filed an application under Order 1 Rule 10 read with Order XXII Rule 4(2) CPC to be impleaded as parties and filed written statement independently.

10. The ratio in the case of *Niranjan Sahu* (supra) is squarely applicable to this case. This Court discussing the scope of Order XXII Rule 4(2) CPC held that the substituted Defendants cannot take any independent stand by filing additional written statement when the deceased Defendant had already filed his written statement. In the instant case, learned trial Court in the impugned order observed that the legal representatives of the deceased Defendant No.1 have taken a new plea in their written statement denying the pleadings of the

Plaintiffs, which was not denied by the original Defendants in their written statement. Thus, such a stand in the written statement will certainly be prejudicial to the Plaintiffs and is contrary to law. As such, the written statement filed by the substituted Defendants could not have been accepted.

11. Accordingly, the impugned order under Annexure-5 is set aside. The written statement filed by the substituted Defendants shall not be taken into consideration while adjudicating the suit.

12. The CMP is allowed to the aforesaid extent.

13. Since the suit is of the year, 2013, steps should be taken for early disposal of the same in accordance with law. Parties are directed to cooperate with learned trial Court for early disposal of the suit. If any of the parties does not cooperate, learned trial Court may take coercive measure in accordance with law.

Urgent certified copy of this judgment be granted on proper application.

(K.R. Mohapatra)
Judge

*Orissa High Court, Cuttack,
Dated 28th March, 2024/Madhusmita*