

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C). No.2933 of 2007

Priyamuja @ Priyambda Bhoi

....

Petitioner(s)
Mr.D.P.Mohanty,
Advocate

-versus-

Subhadra Panigrahi & Ors.

....

Opp.Party(s)
Mr.S.Ghose, Advocate

CORAM:
JUSTICE BISWANATH RATH

ORDER
06.04.2022

Order No.

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1. Heard the submission of Mr.Mohanty learned counsel appearing for the defendant no.4 herein as petitioner.
2. This writ petition involves a challenge to the attempt of transposition of defendant no.13 at the instance of the plaintiff. Mr.Mohanty, learned counsel for the petitioner taking this Court to the factual position that when plaintiff claims the suit property, he has right, title and interest over the suit property. Defendant No.4, the petitioner filing written statement claims third party being the owner of the right, title and interest over the property. In this situation and after the written statement came into picture, plaintiff in an attempt to bring the third party interest to the purview of the suit filed an application under Order 1, rule 10(2) of the Code of Civil Procedure simultaneously also filed an application for transposition of the third party joining as Defendant No.13 on allowing of Order 1 rule 10(2) of C.P.C. application. Both the applications have been allowed, but the writ petition seems to have been allowed the application for transposition of Defendant No.13 also stood allowed. Defendant No.4, the petitioner here raises apprehension in the event of any eventuality of suit being dismissed against plaintiff already existing, there is likelihood of success to defendant No.13, who is also joining as a co-plaintiff. Learned counsel for the defendant No.4 also

raises some question with regard to suffering of suit on account of limitation as well as non-payment of proper court fee. This Court finds the allegation so far as suit suffers on account of limitation as well as non-payment of proper court fee or involving an attempt to avoid proper court fee is a subject matter in the suit, if raised in written statement, it is open to the trial court for its decision on the same but in accordance with law. Now coming to the order allowing Defendant No.13 joining as co-plaintiff being allowed in the impugned order, this Court observes on the joining of defendant No.13 as plaintiff there cannot be an independent relief to be decided involving the suit property involving Defendant No.13 joined as co-plaintiff. It is in this situation this court finds there is no substance in the apprehension of the petitioner. This Court therefore declines to interfere in the impugned order. Consequently the writ petition stands dismissed.

(Biswanath Rath)
Judge

Sks

