

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.12759 of 2006

Narayan Acharya & Anr

....

Petitioner(s)

Mr. Ch.P.K. Mishra,
Advocate

-versus-

Bishnu Ch. Acharya & Ors.

....

Opposite Party(s)

Mr. A.K. Mohanty,
Advocate

CORAM:

JUSTICE BISWANATH RATH

ORDER

20.10.2022

Order No.

06.

1. No further substitution is necessary for there is already existence of rest of the legal heirs of deceased Opposite Party No.2.
2. Heard the submissions of the respective counsel.
3. Undisputedly the suit involves a partition suit filed in the year 2002. Originally the suit involves 11 defendants. It remains undisputed that only after the written statement is filed disclosing about death of defendant no.10 making suit not entertainable, the Plaintiff came up with an application U/o.1 Rule 10 of C.P.C praying therein to implead the legal heirs of the deceased defendant no.10. Such application being considered and rejected, the Petitioners preferred Section 151 application for reconsideration of the matter involved which also came to be rejected. Both the order of rejection are impugned herein. It is made clear that Writ Petition appears to be only involving a challenge to the rejection of the application U/o.1 Rule 10 as well as Section 151 application.

4. Taking this Court to the reason in filing of the Order 1 Rule 10 application learned counsel for the Petitioners submitted that for the suit involves a dead person and there was no occasion for bringing a substitution application for no death taking place during pendency of the suit, accordingly the Order 1 Rule 10 application was filed. Taking this Court to the ground of rejection of the Order 1 Rule 10 application as well as 151 application, learned counsel for the Petitioners submits that there is illegal rejection of such application. Learned counsel for the Petitioners further also submits that in absence of allowing of the application U/o.1 Rule 10 of C.P.C, there may not be effective adjudication of the suit.

5. Learned counsel for the Opposite Parties, on the other hand, in his serious opposition to the applications rejected by the impugned order contend that first of all the application U/o.1 Rule 10 of C.P.C did not disclose the date of death of the defendant no.10 and it is in the circumstance the application for addition of party was *per se* not maintainable. On a query of this Court, there is no denial to the fact that the defendant no.10 died prior to filing of the suit.

6. Considering the rival contentions of the parties and looking to the nature of dispute and the stage of the suit still pending adjudication, this Court finds, undisputedly the suit is a partition suit. Though there is no denial that the defendant no.10 was not surviving at the time of filing of the suit, this Court also takes into account the submission of both the parties that there was no framing of issue even and the suit was pending only after filing of the written statement. It is thus taking into consideration the stage of the suit and the nature of the suit, this Court finds, bringing in relevant parties to the fold of the partition suit, will not only ensure to the benefit of both the parties but will also create better interest of both the parties, and also to facilitate effective

adjudication of the suit and such attempt will further also avoid multiplicity of litigation involving the very same property at a later on stage. Considering the reasons assigned by the trial court in rejection such application, this Court finds, there is no proper consideration of the issue while taking a decision. As a consequence this Court interfering in the order dated 13.01.2003 rejecting the application U/o.1 Rule 10 of C.P.C and the subsequent order dated 24.03.2004, sets aside the both. In the outcome this Court interfering in orders dated 13.01.2003 & 24.03.2004, allows the application U/o.1 Rule 10 of C.P.C. and accordingly directs the plaintiffs to bring the amended cause title of the suit.

7. Both the parties are directed to appear before the trial court along with a copy of this order on 4th November 2022. Considering that the suit is pending since 2002, this Court directs the trial court to conclude the suit at least within a period of nine months, but however, avoiding unnecessary adjournments. But however, after providing opportunity of appearance of legal heirs of defendant no.10, may be at the special messenger cost of the plaintiffs looking to the belatedness of the suit and also providing opportunity to such parties to file their written statement, if any.

8. The Writ Petition stands disposed of.

(Biswanath Rath)
Judge