

IN THE HIGH COURT OF ORISSA AT CUTTACK
C.M.P. No.826 of 2014

Gayatri Pera

....

Petitioner(s)

Mr. S. Mohanty,
Advocate

-versus-

Bidyabati Nayak

....

Opposite Party (s)

None

CORAM:
JUSTICE BISWANATH RATH

ORDER
11.01.2022

Order No.

16.

1. This matter is taken up by video conferencing mode.
2. This Civil Miscellaneous Petition involves a challenge to the order of rejection of an application at the instance of the Plaintiff No.3 under Order 1 Rule 10 of C.P.C by the trial court.
3. During course of submission Mr. Mohanty, learned counsel for the Petitioner contended that during pendency of the Civil Miscellaneous Petition Bidyabati Nayak has died on 25th April, 2021 giving a lawful reason to substitute the Plaintiff no.1. In the process there is definite possibility of bringing the daughter not made as a party in the partition suit involved herein by way of substitution. This Court finds, there is no dispute to such proposition that once a Plaintiff dies there is bound to be substitution of the Plaintiff and all legal heirs of such Plaintiff are bound to be brought on record in the footing of such plaintiff. In the process though this Court declines to interfere in the impugned order, however, directs, in the event there is an attempt for substitution of the Plaintiff No.1, same shall be considered on its own

merit and the impugned order shall not stand on the way of consideration of such application at the instance of the legal heirs, if any, still not a party to the suit.

4. With the aforesaid observation and direction the Civil Miscellaneous Petition stands disposed of.

5. As restrictions due to resurgence of COVID-19 situation are continuing, learned counsel for the parties may utilize a printout of the order available in the High Court's website, at par with certified copy, subject to attestation by the concerned advocate, in the manner prescribed vide Court's Notice No.4587, dated 25th March, 2020 as modified by Court's Notice No.4798, dated 15th April, 2021 and Court's Office order circulated vide memo Nos.514 & 515 dated 7th January, 2022.

(Biswanath Rath)
Judge

