

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.4573 of 2006

Nanda Kishore Panda & Ors.

....

Petitioner(s)

Mr. M.K. Mishra,
Sr. Advocate
Mr. S. Senapati,
Advocate

-versus-

Smt. Sukabai Patro & Ors.

....

Opposite Party(s)

Mr. S.P. Panda,
AGA

**CORAM:
JUSTICE BISWANATH RATH**

**ORDER
18.10.2022**

Order No.

08.

1. This writ petition involves rejection of an application U/o.22 Rule 4 of C.P.C. filed by the Plaintiffs involving substitution of the legal heirs of the deceased defendant no.8. Undisputedly the suit is for partition. The Writ Petition involves a challenge to the order of rejection vide Annexure-2.

2. Learned counsel for the Petitioners taking this Court to the grounds stated in the application U/o.22 Rule 4 of C.P.C submitted that even assuming that the suit was earlier declared *ex parte* as against such defendant and there is an *ex parte* order operating involving a party, but for the pendency of the suit involving partition of the family property, his legal heirs cannot be ignored. Further ignorance of the legal heirs of a dead party will also invite further complications in future; may be in preliminary decree or in final decree stage. It is, in

the circumstance, a request is made for interfering in the impugned order.

3. Considering the submission of learned counsel for the Petitioner and further looking to the findings on the basis of which such application is rejected, this Court finds, the Plaintiff-Petitioners are justified in claiming allowing of the application U/o.22 Rule 4 of C.P.C., on the premises to avoid future complications. Further since the suit involves partition, it may not be appropriate to conclude such suit in absence of the lawful owner of such property even to come by way of substitution to at least safeguard the interest of all such party.

4. In the circumstance, this Court finds, there is illegal exercise of mind in considering the application U/o.22 Rule 4 of C.P.C. In the process, this Court interfering in the order at Annexure-2, sets aside the same and thereby allows the application U/o.22 Rule 4 of C.P.C. Plaintiffs are directed to bring appropriate cause title at least by making their appearance before the trial court along with a copy of the order of this Court on 10th November, 2022 and take steps for issuing notice on the legal heirs of the defendant no.8 on the same date itself. Upon undertaking of such action, the trial court shall do well in completing service of notice on the legal heirs of the deceased defendant no.8 at the earliest. The trial court shall also ensure filing of the written statement of the legal heirs of the deceased defendant no.8 within a period of one month and disposed of the suit at least within a period of six weeks hence.

5. The writ petition stands disposed of.

(Biswanath Rath)
Judge