

IN THE HIGH COURT OF ORISSA AT CUTTACK
W.P.(C) No.20538 OF 2010

Binayak Rath

....

Petitioner(s)

Mr.S.S.Das,
Senior Advocate

-versus-

Sunila Rath and others

....

Opposite Party(s)

Mr.A.C.Mohapatra,
Advocate

CORAM:
JUSTICE BISWANATH RATH

ORDER

14.09.2022

Order No.

11. 1. Heard learned counsel for the Parties.
2. For the death involved herein of Opposite Party Nos. 4,7,9 and 10 all being proforma Opposite Parties, there is no need for substitution.
3. Short point involved herein and as submitted by Mr. Das, learned Senior Counsel that the trial court failed in declining staying the further proceeding on C.S. No.(I) 24 of 2009 at least till an outcome in the Test Case No.7 of 2009 is shown. Mr. Das, learned Senior Counsel taking this Court to the pleadings and documents on record attempted to establish that the property involved in Test Case also involving in the partition case in C.S. No.(I) 24 of 2009.
4. Considering the submission and on getting through the material on record, this Court finds there is no dispute that the property involved in the suit also involving in the Test Case. In this scenario and considering the settled position of law that the Civil Suit should await and to proceed only after the decision is taken in the Test Case, this Court finds the impugned order remain contrary to law.

5. In the process, this Court interferes in the order at Annexure-7 and setting aside the same allows the prayer of the Petitioner at Annexure-4 thereby directing stay of further proceeding of the suit in C.S. No.(I) 24 of 2009 at least till disposal of Test Case No.7 of 2009. Parties are directed to attempt for expediting the hearing of Test case involved.

6. With this observation, the Writ Petition stands disposed of.

(Biswanath Rath)
Judge

Swarna

