

IN THE HIGH COURT OF ORISSA AT CUTTACK

C.M.P. No.104 of 2022

M/s. P.K. Enterprises & Anr.

Petitioner(s)
Mr. B. Bhuyan,
Advocate

-versus-

Suresh Chandra Panda

Opposite Party(s)

CORAM:
JUSTICE BISWANATH RATH

ORDER
11.02.2022

Order No.

01. 1. Undisputedly the suit was contested by two of the defendants jointly and the other defendant neither filed written statement nor even contested the matter. Decree undisputedly involved a jointly and severally liable action involving all the defendants. On filing of miscellaneous application involving death of defendant No.3 action was made that the decree remains in executable as against the legal heirs of the Defendant No.3. There is no dispute at Bar that the defendant No.3 did not contest the suit and it suffered by a common judgment and the decree which again remains un-assailed by the Defendant No.3 during his life time. There is also involvement of a decree on compromise.
2. It is submitted by the learned counsel for Petitioner that even though the Defendant Nos.1 & 2 jointly contested the matter, the Defendant no.3 did not contest and remained *ex parte* to the proceeding.

Under the circumstance, this Court while observing that death of one of the defendant does not stand as a bar in working-out the execution, also observed, there is no illegality in allowing the petition

at the instance of the Plaintiff to indicate the Defendant No.3 as dead and the Court below was justified and rightly allowed. In the circumstance this Court finds, there is no infirmity in the impugned order requiring to be interfered with.

3. Considering the submission made by the learned counsel for Petitioner that the grounds raised herein may be kept open for being considered by the trial court in the ultimate execution proceeding, this Court observes, nothing prevents the Petitioners as contestant to raise the grounds suitable to them, but there should a decision in accordance with law only.

4. With the aforesaid direction the C.M.P. stands disposed of.

(Biswanath Rath)
Judge

Ayaskanta Jena

