

IN THE HIGH COURT OF ORISSA AT CUTTACK

CMP NO.258 OF 2019

Sudhamayee Pattnaik & ors.

....

Petitioners

Mr.S.K.Samantaray, Adv.

-versus-

Bibhu Prasad Sahoo & ors.

....

Opposite Party(s)

Mr.D.Mohapatra, Adv. for O.Ps.1 & 2

Mr.B.P.Pradhan, Adv. for O.Ps.3 to 6

**CORAM:
JUSTICE BISWANATH RATH**

**ORDER
28.3.2022**

**Order
No.**

7.

1. Heard learned counsel for the Parties.
2. The CMP involves allowing an Application under Order 1 Rule 10 of C.P.C. undisputedly at the instance of Defendant Nos.1 to 3. For the facts disclosure in the suit involving declaration, permanent injunction and recovery of possession, in filing the Application under Order 1 Rule 10 of C.P.C., Defendant Nos.1 to 4 attempted to bring third party interest claiming to have been taken place involving the disputed property. Considering the rival contentions of the Parties, the trial court allowed the Application by the impugned order.
3. Mr.Samantaray, learned counsel for the Petitioners however referring to the objection to such Application by the Plaintiffs

submitted that the Plaintiffs are the masters of the suit. No Party should be added at the behest of the Defendants. Further addition by way of this claim will multiply the litigation. In the circumstance, learned counsel for the Petitioners attempted to oppose the impugned order.

4. Mr.D.Mohapatra, and Mr.B.P.Pradhan, learned counsel appearing for the O.Ps. attempted to justify the impugned order.

5. Considering the rival contentions of the Parties, this Court finds, the Order 1 Rule 10 of C.P.C. Application has been brought by Defendant Nos.1 to 4 to bring third party to the fold of contest. In the Premises, it is stated that the questions involved herein since the Plaintiff becomes Dominus Litis, if such an Application at the instance of the Defendants entertainable. Considering the rival contentions of the Parties and going through the decision of the Hon'ble apex Court in ***Rahul S Shah vs. Jinendra Kumar Gandhi & ors*** reported in (2021)6 SCC 418 (AIR 2021 SC 2161), this Court finds, through the said decision, particularly involving the suit for recovery of possession, Hon'ble apex Court so far as it relates to Order 1 Rule 10 of C.P.C. Application is concerned, has come to observe as follows :-

“37. It also becomes necessary for the trial court to determine what is the status of the property and when the possession is not disputed, who and in what part of the suit property is in possession other than the

defendant. Thus, the court may also take recourse to the following actions:

37.1. Issue commission under Order 26 Rule 9 CPC—A determination through commission, upon the institution of a suit shall provide requisite assistance to the court to assess and evaluate to take necessary steps such as joining all affected parties as necessary parties to the suit. Before settlement of issues, the court may appoint a Commissioner for the purpose of carrying out local investigation recording exact description and demarcation of the property including the nature and occupation of the property. In addition to this, the court may also appoint a Receiver under Order 40 Rule 1 to secure the status of the property during the pendency of the suit or while passing a decree.

37.2. Issue public notice specifying the suit property and inviting claims, if any, that any person who is in possession of the suit property or claims possession of the suit property or has any right, title or interest in the said property specifically stating that if the objections are not raised at this stage, no party shall be allowed to raise any objection in respect of any claim he/she may have subsequently.

37.3. Affix such notice on the said property.

37.4. Issue such notice specifying suit number, etc. and the court in which it is pending including details of the suit property and have the same published on the official website of the court.

38. Based on the report of the Commissioner or an application made in that regard, the court may proceed to add necessary or proper parties under Order 1 Rule 10. The court may permit objectors or claimants upon joining as a party in exercise of power under Order 1 Rule 10, make a joinder order under Order 2 Rule 3, permitting such parties to file a written statement along with documents and lists of witnesses and proceed with the suit.

42.3. After examination of parties under Order 10 or production of documents under Order 11 or receipt of Commission report, the court must add all necessary or proper parties to the suit, so as to avoid multiplicity of proceedings and also make such joinder of cause of action in the same suit.”

6. Reading the aforesaid direction, this Court observes, for the nature of the suit involved herein and in view of the decision of the Hon’ble apex Court in *Rahul S Shah (supra)*, even after exercise of the trial court under Order 26 Rule 9 of C.P.C. and taking place prior to framing of issue has gone to the extent of directing the trial court

to add such necessary Parties to be joined as Parties in exercise of power under Order1 Rule 10 of C.P.C., permit such Parties to file Written Statement along with the documents and list of witnesses and proceed with the suit. In the circumstance and for the great change in the legal position, the plea of the Dominus Litis so far as it relates to the suit for recovery of possession does not exist any further. This Court, therefore, declines to interfere with the impugned order.

7. The CMP thus stands dismissed. Interim order dated 20.3.2019 passed in I.A. No.280 of 2019 stands vacated.

M.K.Rout

