

IN THE HIGH COURT OF ORISSA AT CUTTACK

CMP No. 1614 OF 2016

***Smt. Gouri Jena @ Gouribala Jena* *Petitioners*
*and others***

Mr. Maheswar Mohanty, Advocate
-versus-

Sri Naba Kumar Dey and others* *Opp. Parties

Mr. Swarup Kumar Pattnaik, Advocate

**CORAM:
JUSTICE K.R. MOHAPATRA**

ORDER

17.11.2022

Order No.

**I.A. No.1698 of 2016, 962 of 2022
& CMP No.1614 of 2016**

- 7.
1. This matter is taken up through hybrid mode.
 2. Although this matter is listed for consideration of interim applications, but on consents of learned counsel for the parties, the CMP it taken up for final disposal.
 3. The Petitioners in this CMP seek to assail the order dated 6th October, 2016 (Annexure-5) passed by learned Civil Judge (Junior Division), Jaleswar in C.S. No.438 of 1999, whereby he setting aside the *ex parte* order against the Defendant Nos.1(Ga) to 1(Una) allowing them to cross-examine P.W. 3 and to contest the suit, did not permit them to file written statement.
 4. Mr. Mohanty, learned counsel for the Petitioners submits that since the predecessor of the Petitioners, namely, deceased Defendant No.1 had already filed written statement, learned trial Court did not permit the Petitioners to file a fresh one. However, learned trial Court should have permitted the

Petitioners to cross-examine P.Ws.1 to 3 in the suit. But, learned trial Court without applying the correct position of law, only allowed the Petitioners to cross-examine P.W.3 and contest the suit. Hence, he prays for a direction to learned trial Court to permit the Petitioners to cross-examine P.Ws. 1 and 2.

5. Mr. Pattnaik, learned counsel for the Plaintiff-Opposite Party vehemently objected to the same and contended that after allowing an application under Order IX Rule 7 C.P.C., the Defendants can only be allowed to participate in the further proceeding of the suit. Since P.W. 3 has been lastly examined, the Defendants were allowed to cross-examine him. No prayer for cross-examination of P.Ws.1 and 2 have been made as yet. Hence, learned trial Court has committed no error in passing the impugned order under Annexure-5.

6. Considering the rival contentions of the parties, this Court finds that learned trial Court while setting aside the *ex parte* order, permitted the Petitioners, namely, Defendant Nos.1(Ga) to 1(Una) to participate in the further proceeding of the suit without relegating the parties to the date of hearing of the suit. In the facts and circumstances of the case as submitted by learned counsel for the parties, I find no infirmity in the impugned order under Annexure-5.

7. At this stage, Mr. Mohanty, learned counsel submits that the Petitioners can file a petition to recall P.Ws.1 and 2 for their cross-examination. Since no such prayer has yet been made by the Petitioners before learned trial Court, this Court does not express any opinion on such submission made by Mr. Mohanty, learned counsel for the Petitioners. The Petitioners, if so

advised, may file such an application before learned trial Court and in that event, learned trial Court shall do well to consider the same in accordance with law without being influenced by any observation made hereinabove.

8. It is also made clear that this Court has not expressed any opinion on the submission made by Mr. Mohanty, learned counsel for the Petitioners with regard to recall of P.Ws. 1 and 2 for their cross-examination.

9. With the aforesaid observation, this Court disposes of this CMP without interfering with the impugned order under Annexure-5.

10. Accordingly, interim order dated 15th November, 2016 passed in Misc. Case No.1698 of 2016 stands vacated.

11. Since the suit is of the year, 1999, learned trial Court shall do well to dispose of the same as expeditiously as possible preferably by end of February, 2023 in accordance with law.

Urgent certified copy of this order be granted on proper application.

(K.R. Mohapatra)
Judge

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