

IN THE HIGH COURT OF ORISSA AT CUTTACK

CMP NO. 367 OF 2019

Gopal Agrawal and others* *Petitioners

Mr. Amit Prasad Bose, Advocate

-versus-

Shankar Lal Agarwal and another* *Opp. Parties

Mr. Dillip Kumar Pradhan,
Advocate

CORAM:

JUSTICE K.R. MOHAPATRA

ORDER

22.06.2022

Order No.

6. 1. This matter is taken up through hybrid mode.
2. The Petitioners in this CMP seek to assail the order dated 6th December, 2018 (Annexure-1) passed by learned Civil Judge (Senior Division), Nuapada in I.A. No. 78 of 2018 (arising out of C.S. No.167 of 2018), whereby the Opposite Party No.2, namely, Manoj Kumar Sanklecha, has been directed to be impleaded as a party to the suit.
3. Mr. Bose, learned counsel for the Petitioners submits that C.S. No. 167 of 2018 has been filed with the following relief:

“(a) For a judgment and decree declaring that-

- (i) That the Registered Sale-deeds Nos.1203 and 1204 both of 2009 executed on dt.20.06.2009 be declared invalid and inoperative and they be cancelled and set aside.*
- (ii) That, the defendant No.1 had not acquired any right, title and interest in the suit lands by the aforesaid sale-deeds.*

- (b)(i) That, the plaintiffs along with defendant Nos.2 & 3 are all along in possession of the suit lands AND their possession over the same be confirmed.*
- (ii) That, the defendant No.1 had never stepped into possession over the suit lands AND he be permanently enjoined from entering into the suit lands.*
- (c) That, the plaintiffs along with defendant Nos.2 and 3 have equal right, title and interest in the suit land.*
- (d) The possession of the suit lands by the plaintiffs along with defendant Nos.2 and 3 be confirmed.*
- (e) The defendant No.1 be permanently enjoined from entering the suit lands.*
- (f) Any other relief that the court deem just and fit.”*

4. At the time of consideration of the interim application filed under Order XXXIX Rules 1 and 2 C.P.C. in I.A. No. 78 of 2018, the Opposite Party No.2 filed an application under Order 1 Rule 10 C.P.C. to be impleaded as a party to the said suit in the said interim application stating that on 1st November, 2017, the Defendant No.1, namely, Shankarlal Agrawal, had executed an agreement for sale of the suit property in his name (Opposite Party No.2) for a consideration of Rs.1,11,00,000/- out of which the Opposite Party No.2 has already paid a sum of Rs.8,00,000/-. Thus, the Opposite Party No.2 had a right over the suit property. On 5th November, 2017, said Shankarlal Agrawal had been to Khariar Road and approached the Defendant No.2, namely, Hari Prasad Agrawal, to vacate the godown and to stop illegal construction on the same, but the Defendant No.2 refused to vacate the same. As such, said

Shankar Lal Agrawal lodged an F.I.R. before Jonk Police Station, Khariar Road against the Defendant No.2. Thus, the Opposite Party No.2 came to know about pendency of the suit and filed an application for intervention in the suit as well as interim application.

5. It is submitted by Mr. Bose, learned counsel for the Petitioners that learned Civil Judge (Senior Division), Nuapada without considering the scope and ambit of Order 1 Rule 10 C.P.C. allowed the application vide impugned order under Annexure-1. It is his submission that the agreement for sale has not seen in the light of the day. Even if such an agreement is existing it does not confer any legally enforceable right on the Opposite Party No.2. By way of the impugned order, the scope and ambit of the suit will be expanded. The Opposite Party No.2 is trying to get a relief in the suit filed by the Petitioners, which is not permissible in law. These material aspects were not considered by learned trial court for which the impugned order is not sustainable.

6. Mr. Pradhan, learned counsel for the Opposite Party No.2 submits that there is no illegality in the impugned order under Annexure-1. It is his submission that by virtue of the agreement for sale, the Opposite Party No.2 has acquired a right over the suit property. If the Opposite Party No.2 is not made a party to the suit, his interest cannot be protected. There might be multiplicity of litigations also. As such, there is no illegality in the impugned order. He, therefore, prays for dismissal of CMP.

7. Taking into consideration the rival contentions of the parties and on perusal of the record, this Court finds that learned trial court observed that without reaching at the root of the case, no fair justice is possible and hence, the prayer of Opposite Party No. 2 should be allowed.

8. The Opposite Party No.2 filed the intervention application stating that the Defendant No.1-Opposite Party No.1, namely, Shankarlal Agrawal, has executed an agreement for sale in his favour. If the Opposite Party No.2 wants to enforcement of that agreement, he can seek for appropriate relief in a compete Civil Court. In the case at hand, the validity of the registered sale deed executed in favour of Shankarlal Agrawal is in question and the Court is under legal obligation to adjudicate the same. By way of impleadment of Opposite Party No.2, the nature and character of the suit is likely to be changed and the scope of the suit will be enlarged, which is not permissible in the eyes of law. Further, agreement for sale executed in favour of the Opposite Party No.2 has nothing to do with the issue involved in the suit at hand. From the averments made in the intervention application as at Annexure-4, it appears that said Opposite Party No.2 is neither necessary nor proper party to the suit. It further appears that learned Civil Judge (Senior Division), Nuapada has not assigned any good reason for implementation of Opposite Party No.2 in the suit.

9. In view of the above, the impugned order under Annexure-1 is not sustainable and the same is accordingly set aside. Since the suit is of the year, 2018, learned Civil Judge

(Senior Division), Nuapada shall take steps for early disposal of the same in accordance with law.

10. With the aforesaid observation and direction, the CMP is disposed of.

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

(K.R. Mohapatra)
Judge

bks

