

IN THE HIGH COURT OF ORISSA AT CUTTACK

CMP No. 428 OF 2019

Prativa Das

....

Petitioner

Mr. Bibekananda Bhuyan, Advocate

-versus-

Sricharan Das and others

....

Opp. Parties

Mr. Sougat Dash, Advocate on behalf of

Mr. Sarat Kumar Jena, Advocate

CORAM:

JUSTICE K.R. MOHAPATRA

Order No.

ORDER

22.12.2022

I.A. No.818 of 2019

- 8.
1. This matter is taken up through hybrid mode.
 2. This I.A. has been filed for deletion of the name of the Opposite Party No.2, namely, Santilata Das from the cause title of the CMP, as she died on 9th February, 2016 i.e. prior to filing of the CMP.
 3. Considering the submission made by Mr. Bhuyan, learned counsel for the Petitioner, the I.A. is allowed. Name of Opposite Party No.2 be deleted from the cause title of the CMP.
 4. I.A. is accordingly disposed of.

(K.R. Mohapatra)

Judge

CMP No. 428 OF 2019

- 9.
1. Order dated 11th April, 2019 (Annexure-5) passed by learned Civil Judge (Senior Division), Chandikhol in C.S. No.297 of 2011 is under challenge in this CMP, whereby an

application under Order XXIII Rule 1 C.P.C. read with Section 151 C.P.C. for withdrawal of the suit unconditionally has been rejected.

2. Mr. Bhuyan, learned counsel for the Petitioner submits that at the time of argument of the suit, the Plaintiff-Petitioner learnt that there are some inherent defects in the suit itself. Hence, the Plaintiff-Petitioner decided to withdraw the suit unconditionally. Accordingly, a petition under Order XXIII Rule 1 C.P.C. read with Section 151 C.P.C. (Annexure-3) was filed. Learned trial Court by a cryptic order rejected the said application vide order dated 11th April, 2019 under Annexure-5. Since the Petitioner wants to withdraw the suit unconditionally, there should not be any objection at the instance of the Court to allow the same. Had it been a prayer for withdrawal of the suit seeking liberty to file a fresh one, then learned trial Court might have been justified in refusing his prayer. As the Plaintiff-Petitioner wants to withdraw the suit unconditionally, the prayer should have been allowed. He, therefore, prays for setting aside the impugned order under Annexure-5 and allows the Petitioner to withdraw the suit.

3. Mr. Dash, learned counsel appearing on behalf of Mr. Jena, learned counsel for the Opposite Party Nos.5 to 7 submits that law is no more *res integra* on the issue. A suit can be withdrawn even at the appellate stage without seeking liberty to file a fresh one. But, the suit is at the stage of argument and the evidence has already been led by parties. Thus, there is every likelihood that the Petitioner may utilize the materials and file a separate suit for self-same cause of action with a different relief.

He, therefore, submits that learned trial Court has committed no error in dismissing the said application.

4. Considering the rival contentions of the parties, this Court finds that the petition under Annexure-3 was filed for withdrawal of the suit unconditionally. Thus, a fresh suit on the self-same cause of action is barred. In view of the legal position, the apprehension of Mr. Dash, learned counsel is unfounded.

5. In view of the discussion made above, this Court finds that learned trial Court ought to have allowed the prayer for withdrawal of the suit. It also appears from the impugned order under Annexure-5 that the same was cryptic and non-speaking. When the Plaintiff-Petitioner is not interested to pursue the suit, the Court cannot compel him to pursue the suit and face the litigation.

6. Accordingly, the impugned order under Annexure-5 is set aside and C.S. No.297 of 2011 filed by the Petitioner, which is pending before learned Civil Judge (Senior Division), Chandikhol is permitted to be withdrawn.

7. Accordingly, this CMP is disposed of.

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

(K.R. Mohapatra)
Judge

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