

IN THE HIGH COURT OF ORISSA AT CUTTACK

CMP NO.764 OF 2018

Nishakar Nayak

....

Petitioner

Mr.M.Mohanty, Adv.

-versus-

Mayadhara Palai & ors.

....

Opposite Party(s)

Mr.S.N.Mishra, Adv. for O.Ps.1 to 3

**CORAM:
JUSTICE BISWANATH RATH**

ORDER

12.5.2022

I.A.NO.104 OF 2022

**Order
No.**

4. 1. This matter is taken up through hybrid arrangement.
2. Heard learned counsel for the Parties.
3. It is brought to the notice of this Court that there has been death of O.P.8 during pendency of the Suit. This Court finds, there is no need of substitution and leaves such aspect open to be undertaken in the trial proceeding, as the present litigation involves a dispute between the third party and the Plaintiff involving rejection of an Application under Order 1 Rule 10 of C.P.C.
4. I.A. stands disposed of.

(Biswanath Rath)
Judge

CMP NO.764 OF 2018

5. 1. Heard the submission of the learned counsel for the Petitioner involving rejection of an Application under Order 1 Rule 10 of C.P.C. undisputedly by the third party.
2. Taking this Court to the averments in the Third Party Application under Annexure-6, learned counsel for the Petitioner attempted to demonstrate that the suit property not only involves a suit for partition pending in final decree stage but there is also undisputed sale by the ancestors of Defendant Nos.1 to 3. Further it has been disclosed that Defendant Nos.1 to 3 have their contest in the partition suit.
3. Undisputedly, the Third Party Intervenor's interest lies on the interest of Defendant Nos.1 to 3. In the circumstance, this Court finds, there is no necessity of adding further party as the fate of the Third Party Intervenor hinges on the ultimate final outcome already involving the L.Rs. of his vendor, who are seriously contesting. In the circumstance, this Court finds, there is right rejection of the Application under Order 1 Rule 10 of C.P.C.
4. The CMP thus stands dismissed. Interim order dated 17.7.2018 passed in I.A. No.805 of 2018 stands vacated.

(Biswanath Rath)
Judge

M.K.Rout