

IN THE HIGH COURT OF ORISSA AT CUTTACK

CMP No. 715 of 2014

Purna Chandra Barik ***Petitioner***

Mr. Santosh Kumar Samantaray, Advocate
on behalf of Mr. Satya Sindhu Kashyap, Advocate

-versus-

Rukamani Barik and others ***Opp. Parties***

Mr. Maheswar Mohanty, Advocate
(For Opposite Party Nos.1, 3 and 4)

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

ORDER
21.12.2022

Order No.

4. 1. This matter is taken up through Hybrid mode.
2. With leave of the Court, Mr. Samantaray, learned counsel places the matter being authorized by Mr. Kashyap, learned counsel for the Petitioner.
3. This CMP has been filed assailing the order dated 11th March, 2014 (Annexure-3) passed by learned Civil Judge (Senior Division), Balasore in CS No.666 of 2013 (I), allowing an application under Order VI Rule 17 CPC filed by the Plaintiff/Opposite Party No.1.
4. Mr. Samantaray, learned counsel for the Petitioner submits that the petition for amendment was filed at the stage when the Defendant No.1/Petitioner had not entered appearance. Hence, he had no opportunity to object the said application for amendment. The Plaintiff by way of amendment made an attempt to enlarge the scope of the suit by impleading the purchasers as parties to the suit. This being a suit for partition the purchasers are only entitled to the share allotted to

their vender(s) in the suit for partition. Learned trial Court taking note of the fact that the Defendants, who have already entered appearance by that time did not file any objection, allowed the petition by a cryptic order. Hence, the impugned order warrants interference.

5. Mr. Mohanty, learned counsel for the contesting Opposite Parties submits that the proposed amendment is only to implead the purchasers and some co-sharers as parties to the plaint and to introduce the genealogy of the family for better adjudication of the suit. As such, learned trial Court has committed no illegality in allowing the petition for amendment.

6. Taking into consideration the submissions made by learned counsel for the parties and that written statement to the plaint was not filed by the time the petition for amendment was considered, this Court is of the considered opinion that learned trial Court has committed no error in entertaining an application to implead the purchasers as well some of the co-sharers as parties to the suit. Further by amendment of the genealogy, proper adjudication of the suit can be facilitated. Thus, I find no infirmity in the impugned order.

7. Accordingly, the CMP being devoid of any merit stands dismissed.

8. Interim order dated 25th June, 2014 passed in Misc. Case No.669 of 2014 stands vacated.

Issue urgent certified copy of the order on proper application.

(K.R. Mohapatra)
Judge