

IN THE HIGH COURT OF ORISSA AT CUTTACK
CMP NO.383 OF 2022

Sailabala Swain & ors.

....

Petitioners

Mr.S.K.Acharya, Adv.

-versus-

Jyotsnamayee Swain & ors.

....

Opposite Party(s)

CORAM:
JUSTICE BISWANATH RATH

Order
No.

ORDER
10.5.2022

1. Heard learned counsel for the Petitioners.
2. The CMP involves rejection of an Application under Section 10 of C.P.C. filed in the subsequent Suit bearing C.S. No.32 of 2003 seeking stay of the proceeding of the said Suit pending finalization of C.S. No.57 of 2002.
3. Undisputedly, there have been two Suits; one being C.S. No.57 of 2002 seeking declaration of right, title and interest, confirmation of possession and injunction however involving one of the properties involved in C.S.No.32 of 2003. C.S. No.32 of 2003 is a Suit for partition as well as declaration undisputedly involving several other properties along with the properties involved in C.S.No.57 of 2002.
4. Taking this Court to the grounds in the Application under Annexure-4 and the reason of rejection of such Application, vide the

impugned order, learned counsel for the Petitioners contended that first of all, there is wrong recording of non-production of the Plaint in other case in making such a claim, as there is already production of such document, further reason the trial court is not satisfied with the attempt of the Petitioners under the provision of Section 10 of C.P.C. is not justified on the premises that both the Suits involve almost same property and same parties.

5. Considering the submission of the learned counsel for the Petitioners and at the stage of admission, this Court perused the Plaints and their Cause Titles involving both the Suits bearing C.S.No.57 of 2002 and 32 of 2003 along with the prayer and the properties involved therein. In examination of the above, this Court finds, the first Suit was involved one of the properties involved in the subsequent Suit. The subsequent Suit involves so many properties and there has been multiple prayers involving also a prayer for partition. In this scenario and at this stage taking into consideration the request of the learned counsel for the Petitioners at least there should be hearing of C.S. No.57 of 2002 ahead of C.S. No.32 of 2003, this Court finds, in such contingency, there was no requirement of bringing Application under Section 10 of C.P.C.

6. This Court, therefore, observes, there was no requirement of bringing such Application at all. Accordingly, this Court is not

inclined to interfere with the impugned order. This Court in disposal of the CMP further observes, in the event the Petitioners are interested for trial of C.S. No.57 of 2002, for this Court finds, the judgment and decree involving C.S. No.57 of 2002 will be very much dependent in the determination of C.S. No.32 of 2003, Application, if any, filed for hearing of C.S. No.57 of 2002 ahead of C.S. No.32 of 2003, such Application shall be considered appropriately.

M.K.Rout



(Biswanath Rath)
Judge