

IN THE HIGH COURT OF ORISSA AT CUTTACK

RSA No.574 of 2003

Sri Naba Mohanty

....

Appellant

Mr.S.P. Misra, Sr.Advocate

-versus-

Guru Prasad Mohanty

....

Respondent

Mr.A.A. Dash, Advocate

CORAM:

MR. JUSTICE D.DASH

ORDER

10.01.2022

Order No.

12. 1. This matter is taken up by video conferencing mode.
2. The legal representatives of sole Appellant who has died during pendency of the Second Appeal have appeared in the case by filing Vakalatnama in favour of Mr. Alok Kumar Mohanty.

Mr. Mohanty, learned Counsel for the legal representatives of Appellant prays for substitution of the legal representatives in place of the original Appellant since dead.
3. Mr. B.C. Panda, learned Counsel for the Respondent No.1, being present does not object to the said prayer.
4. Prayer as above is accordingly allowed. Cause title sheet be accordingly correct.
5. The substituted Appellants as well as the Respondent No.1 have filed an application under order-23 rule-3 of the Code of Civil Procedure for disposal of the Appeal in terms of compromise as have been arrived at between them. It is stated that with the intervention of the common friends and well

wishers, the parties have amicably resolved the dispute and have arrived at compromise and accordingly, who would be getting which part of the property has been finally decided therein and the parties have accordingly acted upon the said compromise by altering their position.

6. Learned Counsels for the Parties being present submit that here the Trial Court has preliminarily decreed the suit filed by the original Appellant as the Plaintiff and the counter claim of the Respondent No.1 arraigned as Defendant No.1 has been allowed in part. They also submit that the same on being appealed against by the original Appellant (Plaintiff); the result rendered by the Trial Court in the suit has been confirmed.

7. From the submission as above, as also the compromise petition; it is gathered that when the judgment and preliminary decree as passed by the Trial Court and confirmed by the First Appellant Court have been holding the field, the parties have decided amongst themselves as to who would be getting which part of the property and thus in view of the compromise, in case of its accepted, now the suit would stand finally decreed in terms of said compromise and allotment of lands to the parties as per that.

In the given state of affairs, the learned Counsels for the Parties pray for disposal of this Appeal granting liberty to the parties to file their compromise petition before the Court below; where they would also file an application to make preliminary decree final in terms of this compromise.

The prayer as advanced is accepted.

It is thus observed that in case the party/ parties would file an application before the Court below to make the preliminary decree final in terms of the compromise; the Court would do well to immediately take up the same for consideration and do the needful in passing the final decree in terms of compromise directing the compromise petition to form a part of the final decree subject to its acceptance on observance of all other legal formalities and upon satisfaction that it is lawful.

6. The Appeal is accordingly disposed of.

7. As requested, the compromise petition in original filed by the parties giving rise to Misc. Case No.241 of 2016 be returned to the learned Counsel for the substituted Appellant on substitution of an attested photocopy of the same for being presented before the Court below along with an application for making the preliminary decree final in terms of said compromise.

As the restrictions due to resurgence of COVID-19 situation are continuing, learned counsel for the parties may utilize a printout of the order available in the High Court's website, at par with certified copy, subject to attestation by the concerned advocate, in the manner prescribed vide Court's Notice No. 4587 dated 25th March, 2020 as modified by Court's Notice No. 4798 dated 15th April, 2021 and Court's Office order circulated vide Memo No.514 and 515 dated 7th January, 2022.

**(D. Dash),
Judge.**