

IN THE HIGH COURT OF ORISSA AT CUTTACK

C.M.P. No.428 of 2022

Sudhansu Kumar Praharaj

....

Petitioner(s)

Mr. G.N. Rout,
Advocate

-versus-

Prabir Kumar Kar & Anr.

....

Opposite Party(s)

CORAM:

JUSTICE BISWANATH RATH

ORDER

19.05.2022

Order No.

03.

1. This C.M.P. involves rejection of an application for leave to appeal involving the order passed in the suit vide C.S. No.486 of 2016 by a 3rd party.

2. Learned counsel for the Petitioner submitted that for the involvement of previous decree, the judgment passed in C.S. No.486 of 2016 might affect the prospect of the Petitioner and learned counsel, therefore, urged that the 3rd party is a necessary party to bring appeal and there has been mechanical disposal of the application by the appellate court.

3. Considering the submission made by the learned counsel for Petitioner, this Court finds, the cause title in C.S .No.486 of 2016 reads as follows :-

“Aruna Kumar Praharaj, aged about 61 years,
S/o. Late Brundaban Praharaj, Vill.-Solar,
P.O.-Chhatia, P.s.-Bayeeri, Dist.-Jajpur

.....

Plaintiff

-Versus-

Prabir Kumar Kar, aged about 75 years,
S/o. Late Laxmidhar Kar, Vill.-Solar,
P.O.-Chhatia, P.s.-Bayeeri, Dist.-Jajpur

.....

Defendant”

4. Further the prayer involved in the above suit also reads as follows :-

“6) That the plaintiff therefore prays that :-

a) Let the defendant be restrained by way of permanent injunction from entering upon the suit land, from making any construction over the suit land, from creating any sort of obstruction, disturbance or interference in the smooth and peaceful possession of the plaintiff over the suit land, from changing the nature or character of the suit land in any form or manner.

b) Let the defendant be restrained by way of temporary injunction from entering upon the suit land, from making any construction over the suit land, from creating any sort of obstruction, disturbance or interference in the smooth and peaceful possession of the plaintiff over the suit land, from changing the nature or character of the suit land in any form or manner till final disposal of the original suit.

c) Cost of the suit be given to the plaintiff throughout.

d) Any other relief, to which the plaintiff is otherwise entitled to be given to him.”

5. On reading of the aforesaid prayer this Court finds, the plaintiff has sought for permanent injunction against the defendants from entering upon the suit land and from making any construction over the suit land.

In the circumstance, this Court finds, if a decree is passed in the nature of suit indicated herein, the same binds only the parties to the suit and that has nothing to do with the 3rd party. In the process, this Court also finds, the judgment and decree passed in the suit cannot affect the Petitioner herein. In such view of the matter, this Court finds, there is right rejection of the leave application as there is no requirement for bringing appeal by the 3rd party. This Court also clarifies that looking to the nature of the suit, decree involved, if any, therein cannot affect any other party.

6. The C.M.P. stands disposed of.

(Biswanath Rath)
Judge