

IN THE HIGH COURT OF ORISSA AT CUTTACK

CMP No.443 of 2022

Dillip Kumar Panda

.....

Petitioner

Mr. Abinash Routray, Advocate

-versus-

Biswa Bihari Panda and others

....

Opp. Party

CORAM:

JUSTICE K.R. MOHAPATRA

ORDER

18.07.2022

Order No.

3. This matter is taken up through Hybrid mode.
2. Petitioner in this CMP seeks to assail the order dated 25th March, 2022 (Annexure-6) passed in CS No.96 of 2016, whereby an application under Order 1 Rule 10 CPC filed by the present Petitioner, has been rejected.
3. Mr. Routray, learned counsel for the Petitioner submits that the suit has been filed for specific performance of contract executed by Defendant/Opposite Party Nos.5 to 8 in favour of the Plaintiff/Opposite Party Nos.1 to 4 on the plea that Opposite Party Nos. 5 to 8 are not performing their part of the contract. The Petitioner is the adopted son of one Basudev Panda, who is one of the co-sharers of the suit land. Thus, he has a say in the matter. The Defendant/Opposite Party Nos.5 to 8 by playing fraud upon the Petitioner have executed the agreement for sale for the entire suit land in favour of the Plaintiff/Opposite Party Nos.1 to 4. Being the adopted son, the Petitioner has definite share in the suit property. Thus, the agreement for sale of the entire suit land could not have been executed by the

Defendants. In the suit, the Defendants have been set ex parte. Thus, the Petitioner in order to protect his interest in the suit property, filed an application under Order 1 Rule 10 CPC. Learned Civil Judge (Senior Division), 1st Court, Cuttack, without considering the matter in its proper perspective, has passed the impugned order for which this CMP has been filed. In support of his case, Mr. Routray, learned counsel for the Petitioner, placing reliance upon a decision of the Hon'ble Supreme Court in the case of ***Hanumappa Channappa Hullur Vs. Shivamaruthappa Parappa Kalli and others***, reported in 2015 (II) CLR (SC) 707, prays for setting aside the impugned order.

4. Upon hearing learned counsel for the Petitioner and on perusal of the impugned order, this Court is of the considered view that the scope of the suit for specific performance of contract cannot be expanded by impletion of parties and converting it to a suit for declaration.

5. The Petitioner claims share in the property as the adopted son of Basudev Panda. Status of the Petitioner as the adopted son is yet to be decided by competent Court of law. Be that as it may, the ratio decided in the case of ***Kasturi –v- Iyyamperumal and others*** reported in (2005) 6 SCC 733 clearly stipulates that the suit for specific performance of contract cannot be converted to a suit of title by impletion of parties. If the plea of the Petitioner is accepted, then the Court has to make an enquiry with regard to the status of the present Petitioner and his share in the suit property, which will change the nature and character of the suit. Thus, the same is not permissible in law.

6. Addition of parties in the suit for specific performance of contract was not an issue in the case law ***Hanumappa Channappa Hullur*** (supra) referred to by learned counsel for the Petitioner. As such, the same has no application to the case in hand.

7. In view of the above, I am not inclined to interfere with the impugned order and as such the CMP is dismissed being devoid of any merit.

(K.R. Mohapatra)
Judge



s.s.satapathy