

IN THE HIGH COURT OF ORISSA AT CUTTACK

CMP NO. 1221 OF 2016

Smt. Sabitri Singh and others

Petitioners

Mr. Samir Kumar Mishra, Advocate

-versus-

Hari Singh and others

.... Opp. Parties

CORAM:

JUSTICE K.R. MOHAPATRA

ORDER

11.07.2022

Order No.

6. 1. This matter is taken up through hybrid mode.
2. The Petitioners in this CMP seek to assail the order dated 8th April, 2016 (Annexure-2) passed in RFA No. 40 of 2005, whereby learned District Judge, Balasore rejected an application filed by the Petitioners-Appellants under Order 1 Rule 10 C.P.C.
3. Mr. Mishra, learned counsel for the Petitioners submits that the present Petitioners as Plaintiffs filed T.S. No. 315 of 1984 before learned Civil Judge (Junior Division), Jaleswar with a prayer to declare the R.O.R. in respect of 'Kha' schedule property to be wrong and also for partition of 'Gha' by allotting 1/3rd share in favour of the Appellants. The Defendant Nos. 1, 3 to 11, 13 and 16 filed their written statement as well as counter claim. Along with other grounds, they had taken a plea that the suit is bad for non-joinder of necessary parties. Learned Civil Judge (Junior Division), Jaleswar dismissed the suit vide judgment and decree dated 15th January, 2005 and allowed the counter claim of Defendant Nos.10, 11 and 16. Assailing the judgment and decree passed in the suit, the Plaintiffs-Petitioners

filed RFA No. 40 of 2005. During pendency of the appeal, the present Petitioners as Appellants filed an application under Order 1 Rule 10 C.P.C. to implead Tribhuban Singh and Malli Singh as parties to the appeal as Respondent Nos. 23 and 24 respectively. The said petition was also rejected vide order dated 8th April, 2016 (Annexure-2), which is under challenge in this CMP.

4. Mr. Mishra, learned counsel for the Petitioners submits that the suit was essentially filed for partition. As the R.O.R. was wrongly prepared in the name of some of the Defendants, a prayer was made for declaration of the said R.O.R. to be erroneous. The proposed Respondents, namely, Tribhuban Singh and Malli Singh, are necessary parties to the suit as well as to the appeal. Hence, the appeal being the continuous of the suit, they should have been impleaded as Respondents, otherwise the Plaintiffs who claimed 1/3rd share of the suit property will be highly prejudiced. This material aspect was not considered by learned District Judge, Balasore while adjudicating the petition under Order 1 Rule 10 C.P.C. In that view of the matter, the impugned order under Annexure-2 is not sustainable and is liable to be set aside. He further prays for a direction to implead said Tribhuban Singh and Malli Singh as Respondent Nos.23 and 24 to the appeal respectively.

5. Although Opposite Party Nos. 12, 16, 20, 23 and 24 are represented through their learned counsel, none appears on their behalf when the matter is called for hearing.

6. Upon hearing learned counsel for the Petitioners and on perusal of the impugned order, it appears that the Plaintiffs had filed a suit for partition of Schedule 'Gha' property and for

declaration of their right, title and interest over 'Kha' schedule property, which is a part and parcel of the suit property. The contesting Defendants filed their written statement along with counter claim with a prayer to declare their right, title and interest over Lot-1 of 'Gha' Schedule property. They have taken a plea that the suit filed by the present Petitioners is not maintainable due to non-joinder of necessary parties. Learned trial court dismissed the suit of the Plaintiffs not only on the ground of non-joinder of necessary parties, but also with the specific finding that the property has already been partitioned between the co-sharers and after partition, each of the parties has entered into different sale transactions. As such, allowing the counter claim, learned trial court declared the right, title and interest over Lot-1 of 'Gha' Schedule property in favour of contesting Defendants.

7. On perusal of the case record, it is apparent that in spite of an objection raised by the contesting Defendants to the effect that the suit is bad for non-joinder of necessary parties, the Plaintiffs did not take any step to implead necessary parties including Tribhuban Singh and Malli Sing to the suit. The suit was dismissed on contest. One of the grounds of dismissal of the suit was due to non-joinder of necessary parties. Since the Petitioners by filing RFA No. 40 of 2005 assailing the finding of learned trial court in T.S. No.315 of 1984, it has to establish their case on the materials available on record. The Petitioners-Appellants cannot be allowed to overcome the findings of learned trial court by impleading Tribhuban Singh and Malli Singh as parties to the appeal, as prayed for.

8. In that view of the matter, I find no infirmity in the impugned order. Accordingly, the CMP being devoid of any merit stands dismissed.

9. The interim order dated 7th September, 2016 passed in Misc. Case No. 1250 of 2016 stands vacated.

10. Since the appeal is of the year, 2005, learned appellate court shall make an endeavour for early disposal of the appeal in accordance with law expeditiously.

Urgent certified copy of this order be granted on proper application.

(K.R. Mohapatra)
Judge

bks

