

IN THE HIGH COURT OF ORISSA AT CUTTACK
CMP No.526 OF 2022

Sudam Charan Sahu

Petitioner

Mr. Bidesh Ranjan Behera, Advocate

-versus-

Sasmita Sahoo and others

.... Opp. Parties

Mr. Sushanta Kumar Dash, Advocate

CORAM:
JUSTICE K.R. MOHAPATRA

ORDER

18.07.2022

Order No.

3.
 1. This matter is taken up through hybrid mode.
 2. The Petitioner in this CMP seeks to assail the order dated 29th April, 2022 (Annexure-8) passed in Test Case No.14/20 of 2003 (re-numbered as C.S. No.24 of 2004), whereby learned Senior Civil Judge, Angul while adjudicating the prayer to defer the examination of P.W.2 in the said suit till disposal of C.S. No.99 of 2002 for analogous hearing of both the suits, dismissed the petition for transposition of the Petitioner as Plaintiff in C.S. No.99 of 2002.
 3. Both Mr. Behera, learned counsel for the Petitioner and Mr. Dash, learned counsel for the Opposite Parties made lengthy argument with regard to maintainability of a petition for transposition as well as merit of the impugned order passed in C.S. No.24 of 2004 pending before learned Senior Civil Judge, Angul,
 4. In course of hearing, this Court finds that while adjudicating an application for deferring the examination of P.W. 2 in C.S. No.24 of 2004, learned trial Court entertained

and rejected the application filed in C.S. No.99 of 2002 for transposition of the present Petitioner as the Plaintiff in that suit.

5. It is contended by Mr. Behera, learned counsel for the Petitioner that learned trial Court proceeded under an impression that the Petitioner has no *locus standi* to be transposed as Plaintiff in C.S. No.99 of 2002 and rejected the said petition, when C.S. No.99 of 2002 was not posted to that date.

6. Mr. Dash, learned counsel for the Opposite Parties submits that although learned trial Court should not have taken up the petition for transposition in C.S. No.99 of 2002 on that date, but that does not affect the merit of the impugned order.

7. Upon hearing learned counsel for the parties, this Court finds that learned trial Court proceeded under an impression that C.S. No.99 of 2002 has already been abated and thus, a petition for transposition is not maintainable. Further, learned trial Court without passing any order in the petition for deferring of examination to P.W.2 till disposal of the petition for analogous hearing of the aforesaid suits passed the impugned order when C.S. No.99 of 2002 was not posted to that date. Learned Senior Civil Judge, Angul could not have taken up the petition for transposition filed in the said suit and passed an order, which was not the subject matter of consideration on the date the impugned order was passed.

9. In that view of the matter, this Court without expressing any opinion on the merits of the contentions raised

by learned counsel for the parties is of the considered opinion that learned trial Court could not have taken up C.S. No.99 of 2002 and passed an order on the petition filed in that suit for transposition of the present Petitioner as Plaintiff.

10. Thus, the impugned order is not sustainable in the eyes of law and is accordingly set aside. The matter is remitted back to learned trial Court to consider the matter afresh giving opportunity of hearing to the parties concerned and if possible by posting both the suits to a particular date and passing separate orders on the petitions filed in C.S. No.24 of 2004 and C.S. No.99 of 2002 respectively.

11. With the aforesaid observation and direction, the CMP is disposed of.

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

संस्थानिक न्याय

(K.R. Mohapatra)
Judge

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