

IN THE HIGH COURT OF ORISSA AT CUTTACK

CMP No. 537OF 2022

Biswajeet Banarjee and others ***Petitioners***
Mr.Sougat Dash, Advocate

-versus-

Irina Mukharjee and others ***Opp. Parties***

CORAM:
JUSTICE K.R. MOHAPATRA

ORDER
28.07.2022

Order No.

1. This matter is taken up through Hybrid mode.
2. Petitioners in this CMP seek to assail the order dated 23rd April, 2022 passed by learned District Judge, Cuttack in Test Case No.5 of 2021, whereby an application filed by Opposite Party Nos. 1 to 4 under Order I Rule 10(2) CPC has been allowed.
3. Mr. Dash, learned counsel for the Petitioners submits that one Sipra Mukharjee being the rightful owner of the property in question executed a Will in favour of the Petitioners. After her death, a proceeding has been initiated to probate the Will which is pending before learned District Judge, Cuttack as Test Case No.5 of 2021.
- 3.1 During pendency of the Test Case, Opposite Party Nos.1 to 4 filed an application under Order I Rule 10(2) CPC to be impleaded as parties to the said proceeding. Learned District Judge, without considering the objections raised by the Petitioners, allowed the IA vide Order dated 23rd April, 2022 (Annexure-7). Hence, this CMP has been filed assailing the said order.

4. Mr. Dash, learned counsel further submits that Opposite Party Nos.1 to 4 are neither necessary nor proper parties to the proceeding. They are having no semblance of right, title or interest over the property in question. Opposite Party No.4 claims to be impleaded as a party on the basis of a Power of Attorney executed by Opposite Party No.1. It is his submission that the Power of Attorney executed by Opposite Party No.1 is *non est* in the eye of law as Opposite Party No.1 herself is an Attorney of Opposite Party Nos. 2 and 3. Relying upon a decision of the Hon'ble Supreme Court in the case of ***A.C. Narayanan Vs. State of Maharashtra and another***, reported in (2014) 11 SCC 790 he submits that an Attorney cannot execute a Power of Attorney in respect of the same property by redelivering the power conferred on him by the principal. Thus, the Opposite Party No.1 being an Attorney herself could not have executed a Power of Attorney in favour of Opposite Party No.4. Moreover, neither Opposite Party No.1 nor Opposite Party No.4 has been authorized to contest any litigation in the deed of Power of Attorney. They have only been authorized to act on behalf of the principal for mutation and alienation etc. of the property in question. Moreover, Opposite party Nos.2 and 3 have not filed any Vakalatnama in the case. Thus, they could not have been impleaded as parties to the probate proceeding. He, therefore, prays for setting aside the impugned order and direct the learned District Judge to delete their names from the array of Opposite Parties.

5. Upon hearing learned counsel for the Petitioners and on perusal of impugned order, it appears that learned District

Judge taking note of the scope of Sections 268 and 295 of the Hindu Succession Act, 1925 as well as discussing the objections raised, has come to a conclusion that the objections raised can be taken care of at the time of hearing of the probate proceeding. It further appears that no specific plea, as aforesaid, was raised by the Petitioners in their objection to the petition under Order 1 Rule 10(2) CPC.

5.1 The purpose of general citation in a probate proceeding to invite objection from the persons who claim to have interest in the property. By virtue of Power of Attorney executed in favour of Opposite Party No.1 as well as Opposite Party No.4 they claimed to have interest over the property. The effect of the Power Attorney executed either in favour of Opposite Party No.1 or in favour of Opposite Party No.4 is a matter of consideration in the probate proceeding itself. Further, Opposite Party Nos.2 and 3 claimed to have some interest in the property in question, as they have already executed Power of Attorney in favour of Opposite Party No.1 in respect of the self-same property.

6. In view of the above, this Court is of the considered opinion that the objections raised by the Petitioners can be well-adjudicated by leading cogent evidence in the matter. Hence, I find no infirmity in the impugned order under Annexure-7.

7. Accordingly, the CMP fails and the same is dismissed as such.

(K.R. Mohapatra)
Judge