

IN THE HIGH COURT OF ORISSA AT CUTTACK
CMP NO.128 OF 2016

*Christian Catholic Church of
Berhampur*

....

Petitioner

Mr.J.Biswal, Adv.

-versus-

State of Odisha & ors.

....

Opposite Parties

Mr.D.P.Jena, Adv. for O.P.2

CORAM:
JUSTICE BISWANATH RATH

ORDER
5.5.2022

Order No.

13. 1. Heard Mr.J.Biswal, learned counsel for the Petitioner and Mr.D.P.Jena, learned counsel for O.P.2.
2. This CMP involves rejection of an Application under Order 1 Rule 10 of C.P.C. at the instance of the Plaintiff-Petitioner in an attempt to bring in the third party appears to be claiming stake over the same property to the fold of the suit proceeding. This Court finds, the above attempt is an attempt together with moving an Application under Order 6 Rule 17 of C.P.C. to bring in the development taking place involving the selfsame property but however at the instance of the third party.
3. Mr.J.Biswal, learned counsel for the Petitioner taking this Court to the pleadings in the Order 6 Rule 17 of C.P.C. Application

attempted to submit that for the interest shown by the third party in several proceedings indicated therein even involving a Writ Appeal in this Court, for the same property also involved in other proceedings, there should be a composite adjudication of the whole issue and also involving all the Parties so interested. It is next contended that even though the copy of the order-sheet of the Application under Order 6 Rule 17 of C.P.C. is not forming part here but producing copy of this Application already involved, rejection of which involved in CMP No.129 of 2016, an attempt is made to establish that unless the amendment is allowed so also allowing the Application under Order 1 Rule 10 of C.P.C. involved in CMP No.129/2016, there will be no complete adjudication of the dispute involved and the issue will be hunting both Parties at same level or other. It is in the premises, taking this Court to the reasoning in rejecting the Application under Order 1 Rule 10 of C.P.C. confining to the CMP at hand, Mr.Biswal, learned counsel for the Petitioner submitted that there has been no proper consideration of the issue involved herein.

4. Mr.D.P.Jena, learned counsel for O.P.2-Defendant No.2 in the lower court proceeding however made an attempt accusing the Plaintiff for unnecessary dragging on the litigation on the pretext of

Order 1 Rule 10 of C.P.C. as well as Order 6 Rule 17 of C.P.C. Mr. Jena, learned counsel for O.P.2 has no quarrel on the position of law that the Plaintiff being the Master of its own suit is entitled to bring in and/or assemble such other issues and also such Parties to the purview of the civil litigation to have a decision finally.

5. Considering the rival contentions of the Parties, this Court here takes note of the proposed amendment in the Application under Order 6 Rule 17 of C.P.C. even though rejected however such issue is pending in CMP No.129 of 2016, which reads as follows :-

“i. The following be added as para “4(a)” and “4(b) after the para “4” of the plaint.

“4(a). The plaintiff respectfully submits that during pendency of the suit the plaintiff came to know that one smt Khirod Kumari Devi W/o.Late Raj Kumar Singh and D/o.Padmanabh Singh Dev filed a writ proceeding in High Court of Orissa, Cuttack in WP(C) No.10243/2015 as against the district collector and other Govt. Machinery seeking a direction for issuance a writ of Mandamus/Certiorari or any other writ with a direction to the Tahasildar Berhampur for effecting measurement and demarcate the suit lands referring the boundaries of registered sale deed bearing Document No.1892 dtd.27.11.1905 and to record the suit land in her favour contending that the suit land wrongly recorded during the last settlement operation though the suit property is the ancestral property of herself acquired by Late Madan Mohan Singh Deo, Raja Saheb of Dharakote estate of Ganjam District who purchased the same and by virtue of testamentary document the said KK Devi acquired the suit land followed there by the deceased Madan Mohan Singh Deo relinquished the rights in favour of his only son Braja

Kishore Singh Deo under registered relinquishment deed No.2175/1925 and thereafter succeeded by his two sons Padmanabh Singh Deo and Anant Narayan Singh Deo, and they have partitioned the properties under registered document t No.2051/1967 wherein Padmanabh Singh Deo acquired absolute rights. At that stage after the death of Padmanabh Singh Deo it is contended that his wife Parvati Kumari Devi executed a registered will bearing document No.84/1995 in favour of KK Devi bequeathing Dharakote Bungalow, Berhampur in her favour inclusive of the suit property. In the said proceeding the defendant No.2 intervened in the said proceeding. The Hon'ble High Court has been pleased to dispose of the writ proceeding vide orders Dt.26-10-2015 with a direction to the Tahasildar to make measurements of the land in question bringing the facts to the notice to the collector and if the Tahasildar finds that Smt. KK Devi has title over the property by virtue of the Willnama and the registered sale deed to record her name. During course of hearing before the learned Tahasildar after remand, the present plaintiff filed objection petition before the Tahasildar Berhampur in MC No.2-/2015 placing all the facts and prayed for not to record in favour of Smt.KK Devi, the plaintiff further submits that the defendant No.8- Smt. KK Devi has got no right or title or interest or possession of any kind in and over the suit property or on any portion of it under the registered sale deed No.1892 Dt.27-11-1905 followed there by registered relinquishment deed No.2175/1925 and as well as the alleged registered will No.84 dt.07-09-1995 in her favour said to have been made by her deceased mother Parvati Kumari Devi are not at all true statement of facts and are in no way connected or entangled with the present suit property. The property covered under the registered sale deed of the year 1905 is related to the Western boundary property i.e. Dharakote bungalow with its vacant site situated to the West of the suit property pertaining to Hal Plot No.521 for an extent Ac.4.063 dec which is no way related to the suit property i.e. Plot No.522. the plaintiff most humbly submits that Khirod Kumari Devi-defendant No.8 is making tactful gimmicks with false claim of right, title, interest and possession in and over the suit land and she is very much conscious and well aware that Dharakote estate has no right, title and

interest or possession in and over the suit land and the documents of the years, 1905, 1925, 1967 relates to the property which is situated to the west of the suit land and it is engulfed with Plot No.521 and not Plot No.522 in any manner and the said property is forming part of the subject of the suit TS No.75/1980 pending on the file of Civil Judge Sr. Division Berhampur filled by Anant Narayan Singh Deo for partition of the suit properties and the claim of right of primogeniture, his eldest brother Padmnabh Singh Deo having died without any male issues, as against Khirod Kumar Devi and others and in the said suit the said property is item No.2 of Schedule B for an extent Ac.4.063 dec with specified boundaries mentioning therein to the "East...Church property". The suit property under any circumstances does not belong to Dharakote estate and particularly Khirod Kumari Devi under those misinterpreted documents in the prevailing facts and circumstances, the right, title interest and of the possession cannot be claimed and she or her mother P K Devi etc. have got no right and not entitled to canvas any right or title of interest or possession of any kind. The defendant No.8 in collusion with the defendant No.2 are making hide and seek games somehow or other to get into and at the suit property with the wrongful motives of unlawful enrichment at the cost and the property of the plaintiff to have illegal gains as the price in the locality having been reached to a peak level. The defendant No.8 is also bound to be restrained from any kind of interference or encumbrances of any kind of sale alienation etc. and she is not entitled of recording of the suit lands in her favour.

"4(b). The plaintiff most humbly submits that the defendant No.8 is falsely claiming the rights, title coupled with physical possession of a portion of the suit property besides contending the defendant No.2 is in possession of the eastern portion of the suit property. In all the facts and circumstances the defendants are bound to be evicted from the suit property and all the defendants or any of the defendants if found to be in possession of the suit property as whole or in parts are bound to vacate and deliver vacant possession of the same in favour of the plaintiff."

ii) In the prayer para of the plaint, after the words “Ac.4.750 Dec.” the following be inserted.

“And in alternative granting a decree directing eviction of all the defendants or any of the defendants if found to be in possession of the suit property as whole or in parts in favour of the plaintiff.”

4. The proposed amendment does not change the nature and character of the suit and as well the cause of action does not change and the proposed amendment will prevent the multiplicity of the litigations avoiding future complications in all respects. So it is essential to amend the plaint as stated, otherwise the plaintiff will sustain a great irreparable loss and damage and injustice and besides he will be infringed of his rights.”

This Court reading the aforesaid finds, there remains no doubt on the involving of other disputes undertaken in the meantime involving selfsame suit property and there has been litigation at the instance of the third party travelled several courts in several forms. It is at this stage of the matter, this Court finds, unless such pleadings in the Order 6 Rule 17 of C.P.C. Application are brought on Record of the suit and the trial is conducted involving all such issues, there may not be effective adjudication of the suit. This Court finds strength in the submission of the learned counsel for the Petitioner.

6. It is keeping the above in view, though a final decision is required on the above aspect in CMP No.129 of 2016, considering the effect of the Application under Order 1 Rule 10 of C.P.C. at this stage, this Court finds, in the background of the above facts, it may

be justified in bringing the third party into the litigation fold, as non-inclusion of such Party will certainly lead to not only further complication in future litigation but also inviting multiplicity of litigations. It is in the above view of the matter, this Court going through the reasoning in the impugned rejection order involved herein finds, there is mechanical consideration of the whole issue by the trial court.

7. In the process, this Court interfering with the impugned order at Annexure-7, so far it relates to rejection of the Application under Order 1 Rule 10 of C.P.C., sets aside the same. Further in view of the above, this Court allowing the Application under Order 1 Rule 10 of C.P.C. directs for addition of the third party involved therein as co-Defendant at the bottom in the Defendants' side. As a consequence, the Plaintiff is directed to file amended Cause Title at least within seven days of receipt of copy of this order. After the amended Cause Title is filed, there shall be direction for issuing notice to the newly added Parties to the suit to have opportunity of written statement and contest to the suit.

8. The CMP thus succeeds.

(Biswanath Rath)
Judge