

IN THE HIGH COURT OF ORISSA AT CUTTACK

CMP NO. 575 OF 2022

Rajkishore Satapathy and others* *Petitioners

Mr. S.S. Bhuyan, Advocate

-versus-

Baidyanath Satapathy and others* *Opp. Parties

CORAM:

JUSTICE K.R. MOHAPATRA

ORDER

02.08.2022

Order No.

1. 1. This matter is taken up through hybrid mode.
2. 2. Order dated 17th May, 2022 passed by learned Senior Civil Judge, 2nd Court, Cuttack in T.S. No.147 of 1990 is under challenge in this CMP, whereby an application filed by the Plaintiffs-Petitioners under Order XXII Rule 3 C.P.C. for substitution of the legal heirs of the deceased Plaintiff No.1(b), namely, Satchidananda Satapathy, who died on 23rd April, 2022.
3. 3. Mr. Bhuyan, learned counsel for the Petitioners submits that the Plaintiff No.1(b), namely, Satchidananda Satapathy, died on 23rd April, 2022 and an application for substitution of his legal heirs has been filed on 13th May, 2022. Learned Senior Civil Judge applying the provisions under XXII Rule 6 C.P.C. refused to entertain such application observing that no substitution is required when death of either party has occurred between conclusion of hearing and pronouncement of the judgment. It is his submission that hearing of the suit has not yet been concluded as the suit is posted for argument after closure of the evidence of the parties. Stage of argument is also a part of hearing of the suit. Thus, it cannot be said that death of Plaintiff

No.1(b) has occurred between conclusion of hearing and pronouncement of the judgment. As the hearing of the suit is still continuing, the provision of Order XXII Rule 6 C.P.C. is not applicable to the case at hand.

4. In course of hearing, Mr. Bhuyan, learned counsel for the Petitioners, however, submits that looking at the age of the suit, interest of justice will be best served, if the Plaintiffs-Petitioners file an application for recall of the said order drawing attention of the Court to the legal position with regard to conclusion of hearing of a suit..

5. In view of such submission, this CMP is disposed of with a direction that in the event the Petitioners file an application for recall of the order dated 17th May, 2022 passed by learned Senior Civil Judge, 2nd Court, Cuttack in T.S. No. 147 of 1990 and to hear the petition for substitution afresh, within a period of seven days hence along with certified copy of this order, learned trial Court before proceeding with the argument of the suit, shall consider the same in accordance with law, giving opportunity of hearing to the parties concerned.

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

(K.R. Mohapatra)
Judge

bks