

IN THE HIGH COURT OF ORISSA AT CUTTACK

C.M.P. No.1073 of 2018

Puspalata Tripathy

..... Petitioner(s)

Mr. G.D. Senapati
Advocate

-versus-

Gouranga Chandra Sahani

..... Opposite Party(s)

Mr. P.C. Acharya,
Advocate

**CORAM:
JUSTICE BISWANATH RATH**

**ORDER
09.02.2022**

Order No.

06. 1. This C.M.P. arises out of rejection of an application under order 1 rule 10 of C.P.C. undisputedly at the instance of the daughter-in-law having foundation that during life time of the appellant and in pendency of the R.F.A. the father-in-law gifted away the disputed property by virtue of a registered gift deed dated 9.02.2016 vide document No.10931600315. Such application having been rejected the present C.M.P. is filed.
2. Taking this Court to the plea taken in paragraph no.2 of the application U/o.1 R-10 of C.P.C application, learned counsel for Petitioner though did not dispute that the deceased appellant has son available to represent him, but however admitted to maintain the Order 1 rule 10 application on the basis of the gift deed came into existence in the meantime and transfer of property in favour of the

daughter-in-law during pendency of the appeal. In the process learned counsel for Petitioner claimed that there is illegal rejection of application under Order 1 rule 10 of C.P.C. by the trial court.

3. Learned counsel for the Opposite Party opposing the submission made by the learned counsel for Petitioner contended that in the event the sole appellant dies, the property would be vested in favour of his legal heirs and when the son of the deceased is already surviving there is no question of joining of a daughter-in-law in place of the deceased appellant.

4. Further getting into the plea taken in the application under Order 1 rule 10 of C.P.C. learned counsel for the opposite party opposed all the contentions raised on the premises that the gift deed having been prepared on 9.02.1960 not only during pendency of the R.F.A. but also in existence of a decree operating against the deceased appellant and for the deceased appellant having no right title interest over the disputed property, gift of such deed is to be treated as void document. In this premises learned counsel for the Opposite Party justified the impugned order.

5. Considering the rival contentions of the parties, this Court finds, there is no dispute that the Petitioner being the daughter-in-law had moved an application under Order 1 rule 10 of C.P.C. There is no denial that the husband of such daughter-in-law is very much alive. Further there is no dispute that the registered gift deed has been executed on 9.02.2016 and was prepared after the father-in-law being the plaintiff lost in suit prepared for declaration of right title and interest and confirmation of possession. In the circumstance this Court finds, the daughter-in-law was not the legal heir in

survivability of the son of the deceased appellant, at least entitled to get a scope of contest in the suit. Perused the impugned order. This Court finds, there is justified rejection of the application U/o.1 rule 10 of C.P.C. As this Court finds, there is no illegality or infirmity in the impugned order, this Court is not inclined to entertain the C.M.P any further, which is hereby dismissed.

(Biswanath Rath)
Judge

Ayas Kanta Jena

