

IN THE HIGH COURT OF ORISSA AT CUTTACK

CMP No.1100 of 2018
(Through Video Conferencing mode)

Rabindra Kumar Palei and others ***Petitioners***

Mr. H.N. Mohapatra, Advocate

-versus-

Alarnath Dev Bije, Alarpur and others ***Opposite Parties***

Ms. P. Naidu,
Advocate

CORAM: JUSTICE ARINDAM SINHA

Order
No.

ORDER
04.02.2022

3. 1. Mr. Mohapatra, learned advocate appears on behalf of petitioners and submits, order dated 24th July, 2018 made by the trial Court is illegal and made with material irregularity. Learned advocate engaged by defendant no.3, himself affirmed examination-in-chief on affidavit. He refers to the Vakalatnama executed by constituted attorney of defendant no.3, inter alia, in favour of Rabi Sankar Jena, learned advocate, who affirmed the examination-in-chief on affidavit on behalf of defendant no.3.
2. Ms. Naidu, learned advocate appears on behalf of opposite party defendant no.3 and submits, engaged learned advocate was himself managing trustee of defendant no.1 and therefore can knowingly depose about relevant facts for adjudication of controversy in the suit.

3. On query from Court parties are unable to say whether list of witnesses were filed on the side of defendant no.3. Rule 3-A in order XVIII, Code of Civil Procedure requires a party, if he himself wants to appear as a witness, to appear before his other witness. The Commissioner of Endowment, Odisha, Bhubaneswar is party defendant no.3. He has not filed examination-in-chief on affidavit and therefore, it is clear, he does not want to appear as a witness. Any other person, who wishes to be examined on behalf of a party, becomes a party witness. Rule 3 in order XIX provides for procedure regarding affidavits. There can be two kinds of affidavits under the provision. The first is affidavits confined to facts, as the deponent (as party witness) is able of his own knowledge to prove and the other is affidavits filed in interlocutory applications, on which statements of his belief may be admitted.

4. Perused the examination-in-chief on affidavit. It does not say that any statement made therein is to knowledge of the deponent.

5. Impugned order is set aside and petitioner's application (annexure-4), restored. The trial Court deal with the same and thereafter will proceed with trial of the suit as expeditiously as possible, without granting unnecessary adjournments.

6. The CMP is disposed of.

(Arindam Sinha)
Judge