

IN THE HIGH COURT OF ORISSA AT CUTTACK

C.M.P. No.1117 of 2018

Bhimsen Mohapatra

....

Petitioner(s)

Mr.B.Bhuyan, Advocate

-versus-

Gouranga Mohapatra & Ors.

....

Opposite Party(s)

(Disposed of at the stage
of admission)

**CORAM:
JUSTICE BISWANATH RATH**

**ORDER
22.02.2022**

Order No.

09

1. Heard learned counsel appearing for the parties.
2. In course of hearing, this Court taking the defendant no.7 is the contesting opposite party, from the order dated 11.12.2018 finds there is an order for taking steps for issuance of notice on the opposite parties. Office note discloses issuance of notice to opposite party nos.1 to 8 by registered post with A.D. fixing the date of appearance to 17.1.2018. From office note it appears, A.D. is received from opposite party nos.1 to 5 and 7 and 8 after valid service. As a consequence of non-appearance of opposite party no.7, this Court finds there is no contest on behalf of the opposite party no.7. Accordingly this matter is disposed of only after hearing the counsel for the petitioner.
3. This Civil Miscellaneous Petition involves a challenge to the order of the trial court in the rejection of an application under Order 11, Rule 41 of the Code of Civil Procedure read with Section 66 of the evidence Act thereby rejecting the prayer for providing original adoption-cum-gift deed No.2290 dated 1.5.1963 and RSD No.2292 dated 1.5.1963. Reading from the suit averments, learned counsel appearing for the petitioner brought to the notice of this Court through

page- 4 of the plaint disclosing the discussion on the sale deed involved herein and referring to answer of defendant no.7 in Annexure-2 through paragraph-11 of the written statement filed by defendant no.7, finds an attempt is made to satisfy the court that there has been admission on the existence of such document by defendant no.7. It is in this circumstance, learned counsel for the petitioner submitted that there is relevancy in evidence involving such documents as well as instrument for an effective adjudication of the case. He however alleged that trial court has failed to appreciate above and illegally rejected such claim by the impugned order. It is also alleged that the impugned order is solely based on an oral submission of Defendant No.7.

4. Considering the submission of learned counsel for the petitioner and referring to the plaint averments in paragraph-4 and the written statement averment in paragraph-11 at the instance of defendant No.7, this Court nowhere finds at least there is pleading in the plaint indicating that defendant no.7 is in possession of such instrument. Reading from both the paragraphs, this Court finds there is mere indication of existence of such documents and as a consequence, paragraph-11, the defendant no.7 while not disputing the existence of such documents has attempted to explain his submission in respect of paragraphs-3 and 4 pleading involving the plaint. This Court finds there is no semblance of pleading that the plaintiff is not possessing such document and there is even absence of specific plea that such document is available with defendant no.7, further this Court reading through application under Order 11 Rule 14 of the Code of Civil Procedure at Annexure-3 finds this attempt was made as a surprise ground and was not at all available in the pleading of the plaint. In the circumstance, there was no scope for the defendants in countering such pleading. For the above all reasoning assigned in the impugned order, this Court finds there is otherwise no infirmity requiring interference in such order.

5. With this observation, the Civil Miscellaneous Petition stands disposed of.

(Biswanath Rath)
Judge

Sks

