

IN THE HIGH COURT OF ORISSA AT CUTTACK

CMP NO. 598 OF 2022

Dulari Majhi

..... Petitioner

Mr. P.K. Swain, Advocate

-versus-

Hemalata Behera and another

.... Opp. Parties

CORAM:

JUSTICE K.R. MOHAPATRA

ORDER

02.08.2022

Order No.

1. This matter is taken up through hybrid mode.
2. The Petitioner in this CMP seeks to assail the order dated 25th April, 2022 (Annexure-4) passed by learned Civil Judge (Junior Division), Balasore in CMA No. 12 of 2016 (arising out of T.S. No.157 of 1987), whereby an application under Order XXII Rule 3 C.P.C. filed by her has been rejected.
3. Mr. Swain, learned counsel for the Petitioner submits that T.S. No.157 of 1987 was decreed ex parte. The Defendants therein filed an application under Order IX Rule 13 C.P.C. for setting aside the said *ex parte* decree. During pendency of the petition under Order IX Rule 13 read with Section 151 C.P.C., Jaga Majhi (Petitioner No.1 therein) died. Accordingly, the Petitioner No.3 therein filed an application to implead one Basu Majhi as the legal heir of Jaga Majhi stating that Jaga Majhi having died issueless, right to sue and to be sued, survives with his nephew, the brother's son, Basu Majhi. Said application was rejected vide order dated 25th April, 2022. Hence, this CMP has been filed.

4. In course of hearing, Mr. Swain, learned counsel for the Petitioner submits that interest of justice will be best served, if a fresh application under Order XXII Rule 10 C.P.C. is filed and prays for a direction to the learned Civil Judge (Junior Division), Balasore to consider the same in accordance with law.

5. In view of such submission, this Court without expressing any opinion on the merits of the case of the Petitioner disposes of this CMP with a direction that in the event an application under Order XXII Rule 10 C.P.C. is filed, the same shall be considered on its own merit 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

