

IN THE HIGH COURT OF ORISSA AT CUTTACK

CMP NO. 1190 OF 2016

Sanju Roy

..... Petitioner

Mr. Millan Kanungo, Senior Advocate

-versus-

Siris Kanti Roy and others

.... Opp. Parties

Mr. Gautam Mishra, Senior Advocate

(For Opp. Party Nos.1(a) and (b))

CORAM:

JUSTICE K.R. MOHAPATRA

ORDER

01.08.2022

Order No.

- 7.
1. This matter is taken up through hybrid mode.
 2. Although this matter is listed for orders, on consent of learned counsel for the parties, the same is taken up for final disposal.
 3. Order dated 7th July, 2016 passed by learned Civil Judge (Senior Division), Rourkela in C.S. No. 250 of 2008 is under challenge in this CMP, whereby an application filed by the present Petitioner under Order 1 Rule 10(2) C.P.C. has been rejected.
 4. Mr. Kanungo, learned Senior Advocate appearing for the Petitioner submits that one Sris Kanti Roy was recorded owner in respect of the suit property. He has three sons, namely, Shyamal Roy, Sajal Kumar Roy and Ujal Kumar Roy and one daughter, namely, Kalpana Sarkar. Said Sris Kanti Roy filed C.S. No. 250 of 2008 before learned Civil Judge (Senior Division), Rourkela for eviction of Sajal Kumar Roy and for recovery of rent from him. During pendency of the suit, said Sris Kanti Roy expired. His widow, namely, Reba Rani Roy and

one son, namely, Ujal Kumar Roy filed an application under Order XXII Rule 3 C.P.C. for their substitution on the basis of a Will executed in their favour on 7th August, 2007. The Petitioner had no knowledge about the pendency of the suit or substitution of Reba Rani Roy and Ujal Kumar Roy in place of the deceased Sris Kanti Roy. Getting information about the same, she filed an application under Order 1 Rule 10(2) C.P.C. to be impleaded as a party to the suit. The said application being rejected has been challenged in this CMP.

4.1 It is further submitted by Mr. Kanungo, learned counsel for the Petitioner that the substitution of widow and one of the sons in place of the recorded tenant without impleading other legal heirs as parties to the suit will certainly prejudice the Petitioner as she has a right over the suit property by virtue of a registered Will dated 31st March, 1999. If the suit is decided in her absence, she will be highly prejudiced as the possession will be delivered to Reba Rani Roy and Ujal Kumar Roy without considering her right to possess the suit property. It will also lead multiplicity of litigation. Learned Civil Judge (Senior Division), Rourkela without considering the matter in its proper perspective rejected the petition holding that the suit is at the stage of argument. Such a ground is not sustainable in law as the present Petitioner is admittedly a legal heir of the original Plaintiff, namely, Sris Kanti Roy and has interest in the property. He, therefore, prays for setting aside the impugned order and to direct the learned Civil Judge (Senior Division), Rourkela to implead the present Petitioner as a party to the suit.

5. Mr. Mishra, learned Senior Advocate appearing for the Opposite Party Nos.1(a) and (b) submits that the suit is at the stage of argument. It is a suit for eviction and realization of arrear rent. The Opposite Party Nos.1(a) and (b) are admittedly the widow and one of the sons of the original Plaintiff. They sought to be substituted on the basis of a registered Will of 2007, which was the last Will of Sris Kanti Roy. On the other hand, the Petitioner claims to be impleaded as a party to the suit on the basis of a registered Will of 1999. Thus, there is a conflicting claim with regard to the right over the suit property on the basis of two Wills, which cannot be adjudicated in the present suit. Since the Petitioner is not made party to the suit, the decree will not be binding on her. If she claims right over the suit property on the basis of a Will, she can file a properly constituted suit to establish the same. He, therefore, submits that learned trial Court has committed no error in passing the impugned order and prays for dismissal of CMP. It is his submission that the suit is targeted by this Court.

6. Taking into consideration the rival contentions of the parties and on perusal of the record, this Court finds that the Petitioner claims to be impleaded as a party to the suit on the basis of a registered Will executed in her name in the year, 1999. The suit was originally filed by Sris Kanti Roy, the recorded owner, against one of his sons, namely, Sajal Kumar Roy, for eviction and realization of arrear rent. After death of said Sris Kanti Roy during pendency of the suit, the Opposite Party Nos.1(a) and (b) filed an application under Order XXII Rule 3 C.P.C. to be substituted on the basis of a registered Will of 2007.

Thus, there appears a conflicting claim between the Petitioner and Opposite Party Nos.1(a) and (b) over the suit property, which can only be adjudicated by filing a properly constituted suit. The scope of the present suit is for eviction and realization of arrear rent. The Opposite Party Nos.1(a) and (b) on the basis of their substitution only represents the estate of the recorded tenant. Even if a decree is passed in favour of the Plaintiff, the same will not be binding on the present Petitioner as she is not a party to the proceeding. Moreover, the suit is at the stage of argument. If, at this stage, the present Petitioner is directed to be impleaded as a party to the suit, the entire exercise will be futile. On the other hand, if the Petitioner claims any right over the suit property or the arrear rent, she can file a separate suit claiming such relief. Accordingly, I find no infirmity in the impugned order. Thus, the CMP being devoid of any merit stands dismissed.

7. The interim order dated 11th August, 2016 passed in Misc. Case No. 1214 of 2016 stands vacated.

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

(K.R. Mohapatra)
Judge

bks