

IN THE HIGH COURT OF ORISSA AT CUTTACK

CMP No. 609 OF 2022

Taharuddin Khan* *Petitioner

Mr. Bibekananda Bhuyan, Advocate
-versus-

Pratyusa Rajeswari Singh and another* *Opp. Parties

Mr. Arya Tripathy, Advocate
(For Opp. Party No.1)

Mr. Mohd. A. Alam, Advocate
(For Opp. Party No.2)

**CORAM:
JUSTICE K.R. MOHAPATRA**

**ORDER
17.10.2022**

Order No.

- 8.
1. This matter is taken up through hybrid mode.
 2. The Petitioner in this CMP seeks to assail the order dated 14th March, 2022 (Annexure-5) passed by learned Senior Civil Judge, (LR & LTV), Nayagarh in C.S. No.126 of 2018, whereby an application filed by the Opposite Party No.2 under Order 1 Rule 10 C.P.C. has been allowed.
 3. Mr. Bhuyan, learned counsel for the Petitioner submits that C.S. No. 126 of 2018 has been filed for declaration of title, permanent injunction and demarcation of the suit property, more fully, described in the plaint. It is his case that there is a boundary dispute between the Plaintiff and the Defendant (Opposite Party No.1 herein). The intervenor has no say in the matter. During pendency of the suit, the Opposite Party No.2 filed an application under Order 1 Rule 10 C.P.C. to be impleaded as Defendant stating that he is the grandson of one Sk. Bikan Kalapahad, who was Defendant No.3 in the original suit, i.e. O.S. No.14 of 1944-45, which was filed for partition.

In the final decree drawn on 22nd July, 1971, said Sk. Bikan Kalapahad was allotted with share under Sabik Mouza Sinduria in Plot No.1182 to an extent of Ac.0.30 decimals, Plot No.1195 to an extent of Ac.0.04 decimals, Plot No.1391 to an extent of Ac.0.14 decimals, Plot No.1396 to an extent of Ac.0.19 decimals and Plot No.2078 to an extent of Ac.0.38 decimals under Khata No.4. The Opposite Party No.2 being the grandson of Sk. Bikan Kalapahad has right over a portion of the suit property. Learned trial Court without considering that the aforesaid plots do not correspond to Hal Suit Plot No.1815, directed to implead him as a party to the suit observing that *“although it is found that plaint does not content Sabik Plot No.1182 mouza Sinduria, but from the content of defendant’s W.S. & present petition it appears that same may have nexus with the present suit land which some how was/is certain link to SK. Bikan Kalapahad.”*

4. It is submitted by Mr. Bhuyan, learned counsel for the Petitioner that such an observation has no legal basis. The Petitioner is neither the grandson of said Sk. Bikan Kalapahad nor Sabik Plot No.1182 corresponds to Hal suit Plot. Therefore, he is neither a necessary nor a proper party to the suit. In support of his case, he relied upon the decision in the case of ***Sudhamayee Pattnaik and others –v- Bibhu Prasad and others***, reported in 2022 SCC Online SC 1234 and submitted that the Plaintiff is *dominus litis* and he cannot be compelled to contest the suit against whom he does not claim any relief. It is categorically observed in the aforesaid case law as under:

“5. At the outset, it is required to be noted that the defendants in the suit filed application under Order 1 Rule 10 CPC and prayed to implead the subsequent purchasers as party defendants. The suit is for declaration, permanent injunction and recovery of possession. As per the settled position of law, the plaintiffs are the dominus litis. Unless the court suo motu directs to join any other person not party to the suit for effective decree and/or for proper adjudication as per Order 1 Rule 10 CPC, nobody can be permitted to be impleaded as defendants against the wish of the plaintiffs. Not impleading any other person as defendants against the wish of the plaintiffs shall be at the risk of the plaintiffs. Therefore, subsequent purchasers could not have been impleaded as party defendants in the application submitted by the original defendants, that too against the wish of the plaintiffs.”

5. Mr. Alam, learned counsel for the Opposite Party No.2, on the other hand, submits that there is a nexus between Sabik Plot No.1182 and Hal Suit Plot No.1815 as Hal Plot No.1815 has been described to be Ac.0.40 decimals, which is not available in the field as Sabik Plot to which said plot corresponds is only Ac.0.30 decimals. The rest Ac.0.10 decimals of land belongs to grandfather of Opposite Party No.2, namely, late Sk. Bikan Kalapahad. Learned trial Court taking note of the same and for complete adjudication of the matter in controversy, directed to implead the Opposite Party No.2 as a party to the suit. As such, the impugned order under Annexure-5 warrants no interference.

6. Considering the submissions made by learned counsel for the parties and on perusal of the record, it is apparent that there is no material on record to show that Sabik Plot No.1182 over which the Opposite Party No.2 lays his claim, corresponds to Hal Plot No.1815 or Plot No.1815/4774(Suit Plots). The schedule of land as described in the plaint clearly shows that Plot Nos.1815 and 1815/4774 has an area of Ac.0.04 decimals

out of total area of Ac.0.40 decimals. Thus, the contention of Mr. Alam, learned counsel for the Opposite Party No.2 does not appear to be correct. However, total extent of the land has been shown to be Ac.0.40 decimals in the schedule of the plaint. There is no material on record to correspond the Sabik Plot No.1182 with the aforesaid two suit plots. On perusal of the intervention application, it appears that the Opposite Party No.2 seeks to introduce a completely new story, which has no relevance for adjudication of the suit. Further, the Hon'ble Supreme Court very recently in the case law of ***Sudhamayee Pattnaik and others*** (supra) has held that the Plaintiff cannot be compelled to implead a party against whom he does not claim any relief. Of course, the Court may *suo motu* direct implection of a 3rd party intervenor, if his implection is required for proper adjudication of the case. In the instant case, the Opposite Party No.2 has filed an application to be impleaded as a party to the suit.

7. On perusal of the impugned order under Annexure-5, it appears that learned trial Court was also not sure as to whether any interest of the intervenor is going to be affected or not, if he is not impleaded as party to the suit. In such circumstance, the petition under Order 1 Rule 10 C.P.C. should not have been allowed.

8. Accordingly, the impugned order under Annexure-5 is set aside and this CMP is allowed to the aforesaid extent.

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

(K.R. Mohapatra)
Judge