

IN THE HIGH COURT OF ORISSA AT CUTTACK
CMP NO. 612 OF 2022

Krushna Chandra Sabat ***Petitioner***
Mr. Pranab Ranjan Chhatoi, Advocate
-versus-
K. Chitti Babu and another ***Opp. Parties***

CORAM:
JUSTICE K.R. MOHAPATRA

ORDER
18.07.2022

Order No.

1. This matter is taken up through hybrid mode.
2. The Petitioner in this CMP seeks to assail the order dated 20th June, 2022 passed in T.S. No. 30 of 2002, whereby learned Civil Judge (Senior Division), Berhampur rejected an application filed by him to recast the issues already settled in the suit.
3. Mr. Chhatoi, learned counsel for the Petitioner submits that the mother of the Petitioner was the original Defendant in the suit. She had filed her written statement and on the basis of the written statement, issues were framed. During pendency of the suit, the Defendant died and the present Petitioner being her son was substituted as Defendant No.1(a). On substitution, the Defendant No.1(a) filed a counter claim, which was rejected vide order dated 18th February, 2022 and the Petitioner was only granted liberty to cross-examine P.W.1. In the counter claim, the Defendant No.1(a) (present Petitioner) claimed right over the property by virtue of a Will executed in his name. Hence, an application was filed to recast the issues accordingly.

It is his submission that learned trial Court rejected the said petition only on the ground that the petition is silent about the issue, which the Petitioner wants to recast. It was further held that it is a year old suit and the same has been posted for hearing of argument since 20th April, 2022. Thus, learned trial Court refused to entertain such application. He further submits that a substantial right of the Petitioner is going to be affected, unless an issue with regard to right of the Petitioner over the suit land by virtue of a Will is decided in the suit. He, therefore, prays for setting aside the impugned order and to remit the matter back to the learned trial Court to file a better application.

4. Taking into consideration the submission made by learned counsel for the Petitioner and on perusal of the case record, it is apparent that counter claim filed by the Petitioner has already been rejected and recording of the evidence of the parties has already been closed. The suit is posted for hearing of argument. The petition filed by the Petitioner is also not clear about the issue the Defendant No.1(a) wants to recast. In that view of the matter, such a prayer cannot be entertained at a belated stage as has rightly been observed by the learned trial Court.

5. Accordingly, this Court finds no infirmity in the impugned order. The CMP stands dismissed.

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

(K.R. Mohapatra)
Judge