

IN THE HIGH COURT OF ORISSA AT CUTTACK

CMP NO. 316 OF 2017

Ramachandra Mahal ***Petitioner***
Mr. Samir Kumar Mishra, Advocate

-versus-

Kailash Chandra Das and others ***Opp. Parties***
Mr. Chittaranjan Pattnaik, Advocate
(For Opp. Party Nos.1 to 6)

CORAM:
JUSTICE K.R. MOHAPATRA

ORDER

25.07.2022

Order No.

11. 1. This matter is taken up through hybrid mode.
2. The Petitioner in this CMP seeks to assail the order dated 23rd February, 2017 passed by learned Civil Judge (Senior Division), Nilgiri in C.S. No. 57 of 2015, whereby an application filed under Order 1 Rule 10 C.P.C. by Opposite Party No. 7 was allowed.
3. Mr. Mishra, learned counsel for the Petitioner submits that the Opposite Party Nos.1 to 5 filed C.S. No. 57 of 2015 impleading the Petitioner and Opposite Party No.6 as Defendants claiming 1/3rd share in the suit property and also for injunction. The Petitioner-Defendant No.1 filed written statement along with counter claim stating that Shantilata Das, who was the predecessor of the Plaintiffs-Opposite Party Nos.1 to 5 and Defendant No.2 (Opposite Party No.6) had no right, title and interest over the suit land as the Defendant No.1 has purchased the suit property from the rightful owner, namely, Ramesh Chandra Satpathy, on 25th September, 1999 for valuable

consideration. During pendency of the suit, the Opposite Party No. 7 filed a petition under Order 1 Rule 10 C.P.C. claiming that the predecessors of the Plaintiffs, namely, Shantilata Das and Lalit Mohan Nayak (Opposite Party No.6) had executed an agreement for sale of the suit land on 10th February, 2008 to the Petitioner. Hence, she was directed to be impleaded as a party to the suit. Learned trial court although held that the Opposite Party No.7 is not a necessary party to the suit but holding him to be a proper party allowed the petition under Order 1 Rule 10 C.P.C. Hence, this CMP has been filed.

4. Mr. Pattnaik, learned counsel for the Opposite Party Nos.1 to 6 submits that he has no objection, if the CMP is allowed and the impugned order is set aside. However, a direction may be made for early disposal of the suit.

5. On perusal of the office note, it appears that although notice was issued to the Opposite Party No.7 by registered post with A.D. in the address given in the petition under Order 1 Rule 10 C.P.C., A.D. has not yet returned back. Hence, in view of the provision under Order V Rule 9(5) C.P.C., the same is treated to be sufficient and this Court proceeds with the matter. Since the contesting Opposite Parties to the suit have univocally prayed for setting aside the impugned order, this Court has no hesitation to allow the prayer made in the CMP and set aside the order dated 23rd February, 2017 under Annexure-4. Accordingly, the impugned order is set aside.

6. Since the Opposite Party No. 7 has not appeared, he may, if so advised, may seek for variation of this order, if feels aggrieved.

7. Learned trial court shall do well to make an endeavour for early disposal C.S. No. 57 of 2015. Parties are also directed to co-operate with the learned trial court for its early disposal.

8. With the aforesaid observation and direction, the CMP is disposed of.

9. The interim order dated 20th March, 2017 passed in Misc. Case No. 355 of 2017 stands vacated.

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

(K.R. Mohapatra)
Judge

bks

