

IN THE HIGH COURT OF ORISSA AT CUTTACK

CMP No. 628 OF 2022

Shibanee Dutta

Petitioner

In person

-versus-

Debabrata Ray and others

.... Opp. Parties

CORAM:

JUSTICE K.R. MOHAPATRA

ORDER

28.07.2022

Order No.

01. 1. This matter is taken up through hybrid mode.
2. The Petitioner in this CMP seeks to assail the order dated 20th June, 2022 (Annexure-1) passed by learned District Judge, Khurda at Bhubaneswar in C.M.A. No.46 of 2018.
3. The Petitioner, who appears in person, submits that Test Case No.18 of 2007 was allowed by learned District Judge, Khurda at Bhubaneswar granting probate of Will executed vide Exts.3 and 4 therein. The Petitioner being aggrieved filed a petition for revocation of the probate under Section 263 of the Indian Succession Act, 1925 (for short 'the Act') before learned District Judge, Khurda at Bhubaneswar. The said petition has been registered as CMA No.46 of 2018. During pendency of the said proceeding, one Abhisek Ray filed an application to be substituted in place of the deceased Opposite Party No.4, namely, Subrat Ray (Opposite Party No.4 therein). The Petitioner also filed an application along with objection therein to exempt substitution of Subrat Ray under Order XXII Rule 4(4) C.P.C. stating that Subrat Ray had neither filed written statement nor had contested the probate proceeding. Hence, his substitution is required to be exempted and the matter is to be proceeded in accordance with law. Learned

District Court without considering the same, allowed the petition vide order dated 16th November, 2021 under Annexure-3 by impleading said Abhisek Ray as Opposite Party No.6 in C.M.A. No.46 of 2018. The Petitioner filed an application on 14th December, 2021 to recall the said order dated 16th November, 2021, which was rejected vide order dated 20th June, 2022 under Annexure-1. Hence, this CMP has been filed.

4. It is submitted by the Petitioner that whereabouts of Subrat Ray not known. Whether he is dead or alive, is also not known. Hence, the petition filed by Abhisek Ray to be substituted in his place is not maintainable. Death certificate as well as legal heir certificate of Subrat Ray is also doubtful. Without considering the same, learned District Judge allowed the petition filed by Abhisek Ray vide order under Annexure-3 and also illegally rejected the petition for recall of the said order vide order under Annexure-1. It is her submission that both the orders under Annexures-1 and 3 are not sustainable in the eyes of law. Hence, she prays for setting aside the order under Annexure-1 and to delete the name of Abhisek Ray from the array of the Opposite Parties.

5. Upon hearing the Petitioner and on perusal of the record, this Court finds that Abhisek Ray claiming himself to be the legal heir of the deceased Subrat Ray-Opposite Party No.4, had filed the petition for substitution. It is, however, submitted by the Petitioner that whereabouts of said Subrat Ray is not known and it is also not known whether he is alive or not. It is also submitted that Debabrata Ray-Opposite Party No.1 had never intimated the Court about the death of Subrat Ray. Hence, the death of the Subrat Ray is doubtful. It appears from

the impugned order that the said objection was taken care off in the order under Annexure-3, allowing the petition to implead Abhisek Ray (who is not made a party to the CMP) as a party to the CMA. The said order was not challenged in this CMP. The Petitioner only assails the order under Annexure-1 refusing to recall the order directing impletion of Abhisek Ray. For better appreciation, the prayer made in the CMP is quoted herein:

“The Petitioner, therefore, prayers:

That this Hon’ble Court be pleased to call for the records of the case and after perusing the same, set aside and quash the order of Refusal being Annexure-1 hereto by a writ of certiorari.”

6. Since Abhisek Ray claiming to be the legal heir of Subrat Ray, he is a necessary party to be impleaded in the CMA No.46 of 2018. There is no material on record to show that Subrat Ray is alive. However, Abhisek Ray had filed copies of the death certificate and legal heirs certificate of said Subrat Ray. In that view of the matter, when Abhisek Ray claims to contest the proceeding under Section 263 of the Act in CMA No.46 of 2018, his impletion should not be denied and learned District Judge, Bhubaneswar has rightly done so. Further, no effective order can be passed in this CMP without impleading said Abhisek Ray as party to it.

7. In view of the above, I find no infirmity in the impugned order.

8. Accordingly, this CMP is dismissed.

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

(K.R. Mohapatra)
Judge