

IN THE HIGH COURT OF ORISSA AT CUTTACK

CMP No. 643 OF 2022

Kshyamanidhi Singh Bariha* *Petitioner

Mr. Ayusman Mahanta, Advocate

-versus-

Sairendri Bariha and others* *Opp. Parties

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

**ORDER
23.08.2022**

Order No.

01. 1. This matter is taken up through hybrid mode.
2. The Petitioner in this CMP seeks to assail the order dated 22nd April, 2022 (Annexure-5) passed by learned Civil Judge (Senior Division), Padampur in Civil Suit No.35 of 2020, whereby he allowed an application filed by Opposite Party No.1 (Defendant No.3) for substitution of deceased Plaintiff No.2.
3. Mr. Mahanta, learned counsel for the Petitioner submits that the Plaintiffs belongs to Scheduled Tribe community and are not governed by the provisions of the Hindu Succession Act, 1956. They are governed under the old Hindu Law. During pendency of the suit, the Plaintiff No.2 died. The Plaintiff No.3 filed an application under Order XXII Rule 3 C.P.C. to implead legal representatives of deceased Plaintiff No.2, namely, Cakadola Bariha and Durgashankar Bariha (not made parties to the CMP) as parties to the suit. The said application was allowed without considering the fact that they cannot inherit the property of the deceased Plaintiff No.2, as it will revert back to the source from which the deceased Plaintiff No.2 had acquired the same. The deceased Plaintiff No.2 had only limited interest in the property. Learned trial Court without considering the same, allowed the

petition holding that the suit is at the nascent stage and the right of the legal heirs of deceased Plaintiff No.2 can only be gone into at the time of adjudication of the suit. He, therefore, prays for setting aside the impugned order under Annexure-5 and direct the Plaintiffs to delete the name of deceased Plaintiff No.2 from the array of Plaintiffs.

4. Upon hearing learned counsel for the Petitioner and on perusal of the record, it appears that learned trial Court has directed the sons of deceased Plaintiff No.2 to be impleaded as her legal representatives. They are only representing the interest of the deceased Plaintiff No.2 in the suit. They cannot claim any absolute right, title and interest over the suit property by virtue of the said substitution. Their right, title and interest, if any, over the estate of deceased Plaintiff No.2 can only be gone into at the time of adjudication of the suit, if plea to that effect is taken. Thus, I find no infirmity in the impugned order under Annexure-5.

5. It is, however, made clear that if the Petitioner-Defendant No.2 raises any issue with regard to right of the legal heirs of deceased Plaintiff No.2 over the suit property, issue to the effect be framed for adjudication in accordance with law.

6. Accordingly, this CMP is disposed of.

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

(K.R. Mohapatra)
Judge