

IN THE HIGH COURT OF ORISSA AT CUTTACK

CMP No. 649 of 2022

Lata @ Latika Maharana and others* *Petitioners

Mr. Narayan Prasad Parija, Advocate

-versus-

Adhiraj Moharana

.... Opp. Party

Mr. Manoj Kumar Panda, Advocate

CORAM:

JUSTICE K.R. MOHAPATRA

ORDER

10.10.2022

Order No.

1.

This matter is taken up through hybrid mode.

Mr. Manoj Kumar Panda, learned counsel and associates by filing Vakalatnama enters appearance on behalf of the Opposite Party, which is taken on record.

Petitioners in this CMP seek to assail the order dated 9th March, 2022 (Annexure-3) passed by learned Civil Judge (Senior Division), 2nd Court, Cuttack in CS No.59 of 2020, whereby sons of the deceased/Plaintiff-Panchei Moharana @ Dei, were directed to be impleaded as Plaintiffs.

Mr. Parija, learned counsel for the Petitioners submits that Petitioners are daughters of the deceased Plaintiff, namely, Panchei Moharana, who filed the suit for declaration that the RSD dated 1st October, 2019 executed in favour of the Defendant is invalid, inoperative, illegal and a void document. Further, prayer was made for permanent injunction. During pendency of the suit, said Panchei Moharana died and the Petitioners filed an application under Order XXII Rule 3 CPC to be substituted in place of the deceased Plaintiff and to

implead Laxmidhar Moharana and Surendra Moharana (sons of Panchei) as proforma Defendant Nos.2 and 3. It is his submission that the sale deed was executed in favour of Defendant-Opposite Party by practicing fraud. Laxmidhar Moharana and Surendra Moharana are witnesses to the said sale deed. Thus, there is connivance of the Defendant with Laxmidhar and Surendra for execution of the sale deed. Adhiraj Moharana, the Defendant is none other than the son of Laxmidhar Moharana. Thus, said Laxmidhar Moharana and Surendra Moharana have conflicting interest with the Petitioner. As such they cannot join together to pursue the suit. Learned trial Court, without appreciating the position of law, directed to implead the Petitioners as well as Laxmidhar Moharana and Surendra Moharana as Plaintiffs in place of deceased Panchei Moharana. He, therefore, prays for setting aside the impugned order and to issue direction to implead Laxmidhar and Surendra as proforma Defendant Nos. 2 and 3.

5. Mr. Panda, learned counsel for the Opposite Party/Defendant submits that the CMP is not maintainable as said Laxmidhar Moharana and Surendra Moharana are not made parties. Further there is no allegation of connivance of Laxmidhar Moharana and Surendra Moharana in executing the sale deed. They were only witnesses to the said sale deed. In absence of any specific allegation against said Laxmidhar and Surendra in executing the sale deed, no presumption can be drawn that they have connivance with the Defendant. In that view of the matter, he prays for dismissal of the CMP.

6. Heard learned counsel for the parties; perused the impugned order. Mr. Parija, learned counsel for the Petitioner

in course of hearing drew attention to the averments in para-11 of the plaint (Annexure-4), relevant portion of which reads as under:-

“11. The witnesses who have been named in the alleged deed were not present when the plaintiff gave her L.T.I. in the alleged Deed. The alleged witnesses and the scribe in the deed are own people of the defendant and the plaintiff has not acquainted with them in respect of alleged Deed.”

It only show that the allegations made stating that said Laxmidhar Moharana and Surendra Moharana were not present when the Plaintiff gave L.T.I. on the alleged deed. It further discloses that the said witnesses were own people of the Defendant. Mr. Parija, learned counsel for the Petitioners further refers to the deposition of the Plaintiff, who was examined as PW-1 from which it transpires that Laxmidhar Moharana was cited as a party to the alleged fraud. It is his submission that Defendant was set ex-parte and while recording ex-parte evidence of the Plaintiff, she had deposed as above. The materials placed before this Court cumulatively do not suggest that Laxmidhar and Surendra had connived with the Defendant for execution of the alleged sale deed. They were only witnesses to the sale deed in question. Thus, the allegation made is a mere apprehension of the Petitioners. Further, said Laxmidhar Moharana and Surendra Moharana, against whom allegations have been made, are not made parties to the CMP. In that view of the matter, I am not inclined to entertain this CMP.

6.1 It is however, submitted by Mr. Parija, learned counsel for the Petitioners that since the Petitioners have conflicting

interest with Laxmidhar Moharana and Surendra Moharana, they (Petitioners) may be impleaded as Defendants.

7. In view of the above, without interfering with the impugned order, the CMP is disposed of with an observation that in the event the Petitioners file an application to be transposed as Defendants in the suit, learned trial Court shall consider the same in accordance with law giving opportunity of hearing to the parties concerned.

8. Interim order dated 8th August, 2022 passed in IA No.718 of 2022 stands vacated.

Issue urgent certified copy of the order on proper application.



(K.R. Mohapatra)
Judge