

IN THE HIGH COURT OF ORISSA AT CUTTACK

CMP No. 684 of 2022

Haladhar Das Mohapatra ***Petitioner***

Mr. Malaya Kumar Mishra, Advocate

-versus-

Duryodhan Sahoo and another ***Opp. Parties***

CORAM:

JUSTICE K.R. MOHAPATRA

ORDER

21.09.2022

Order No.

2. 1. This matter is taken up through hybrid mode.
2. Order dated 30th May, 2022 (Annexure-5) passed by learned Additional District Judge, Puri in FAO No.5/28 of 2021/2017 is under challenge in this CMP, whereby learned appellate Court, while modifying the order dated 14th July, 2017 (Annexure-4) passed by learned Civil Judge (Senior Division), Puri in CS No.417 of 1995 although allowed the present Petitioner to be impleaded as Defendant to the suit, but refused the prayer of the Petitioner to be impleaded as co-Plaintiff.
3. Mr. Mishra, learned counsel for the Petitioner submits that during pendency of the suit, the Plaintiff - Harihara Mahapatra executed a registered gift deed in favour of Haladhar Das Mohapatra. On the basis of the same, the present Petitioner filed an application under Order XXII Rule 10 CPC to be impleaded as a co-Plaintiff to represent the estate of the Plaintiff along with him. Learned Civil Judge (Senior Division), Puri, by

order dated 14th July, 2017 allowed the said application and directed to implead the present Petitioner as a co-plaintiff. Although the said order was not challenged by the Plaintiff himself, Defendant assailed the same in FAO No.5/28 of 2021/2017. Learned additional District Judge, Puri vide order under Annexure-5 modified the order passed by learned trial Court to the extent that said Haldhar Das Mohapatra joined as a Defendant and also directed the Plaintiff to file an amended plaint by impleading said Haladhara Das Mohapatra accordingly.

3.1 Mr. Mishra, learned counsel further submits that by virtue of a gift deed executed by the Plaintiff-Harihara Mahapatra, the property in question devolved upon the present Petitioner. Hence, he is a necessary party to the suit. On earlier occasion, due to negligence of the Plaintiff, the suit was dismissed for default, but subsequently with the intervention of this Court, the matter was restored on payment of cost. Thus, there is every likelihood that the Plaintiff may not contest the suit and in that event there will be irreparable loss to the Petitioner. Taking into consideration the same, learned trial Court allowed the application filed by the Petition under Order XXII Rule 10 CPC and directed to implead the Petitioner as a co-Plaintiff. The Plaintiff is not aggrieved by the said order. However, Defendant, who has no locus standi, filed the aforesaid appeal before learned Additional District Judge, Puri under Order XLIII CPC and the impugned order has been passed. While considering the matter, learned appellate Court took into consideration that the Plaintiff has seriously challenged the gift deed specifically stating that it was a forged

document. It is his submission that, had it been so, then the Plaintiff would have challenged the order passed by learned trial Court in impleading the Petitioner as co-Plaintiff. Be that as it may, the Defendant has no say in the matter. However, the said order was challenged by the Defendant and learned appellate Court by misconstruing the position of law, has passed the impugned order. Hence, this CMP has been filed.

4. Upon hearing learned counsel for the Petitioner and on perusal of the record, it appears that the Petitioner is claiming interest over the suit property by virtue of a gift deed dated 23rd February, 2012 stated to have been executed by the Plaintiff in his favour. As it appears, the same is seriously disputed by the Plaintiff himself. Only because the Plaintiff did not challenge the order of learned trial Court directing the Petitioner to be impleaded as co-Plaintiff, it does not take away the right of the Defendant to challenge the same. Law is well-settled, a person having conflicting interest cannot join to file a suit. Since the Plaintiff seriously disputed the genuineness of the gift deed alleged to have been executed in favour of the Petitioner, there is a conflicting claim between the Plaintiff and the present Petitioner. Mr. Mishra, rightly pointed out that the suit was dismissed for default, but on perusal of the order passed by learned trial Court under Annexure-4, it appears that the Plaintiff himself took keen interest to get the suit restored by moving learned District Judge as well as this Court. Hence, the apprehension of the Petitioner that the Plaintiff may not take interest to pursue the suit after transferring the suit land in favour of the present Petitioner, is unfounded. In that view of

the matter, I find no infirmity in the impugned order under Annexure-5, wherein a direction has been made to implead the present Petitioner as a Defendant.

5. Accordingly, the CMP being devoid of any merit stands dismissed.

(K.R. Mohapatra)
Judge



s.s.satapathy