

IN THE HIGH COURT OF ORISSA AT CUTTACK
CMP No. 706 OF 2022

Sudhir Patra

....

Petitioner

Mr. Hrudananda Mohapatra, Advocate

-versus-

Shyama Prasad Dash and others

....

Opp. Parties

Mr. Mruganka Mauli Patanaik,
Advocate

CORAM:
JUSTICE K.R. MOHAPATRA

ORDER
15.09.2022

Order No.

01. 1. This matter is taken up through hybrid mode.
2. The Petitioner in this CMP seeks to assail the order dated 4th July, 2022 (Annexure-4) passed by learned Additional Senior Civil Judge, Puri in C.S. No.381 of 2015, whereby he allowed an application filed by the Opposite Party Nos.1 and 2 to be impleaded as parties to the suit.
3. Mr. Mohapatra, learned counsel for the Petitioner submits that the suit has been filed for declaration of right, title and interest as well as confirmation of possession of the Plaintiff over the suit land. The Plaintiff has also prayed for a decree of permanent injunction against the Defendants-Opposite Party Nos.3 to 7. Claim of title of the Plaintiff over the suit land is on the basis of registered sale deed 14th February, 2011 executed by Defendants-Opposite Party Nos.1 and 2 through their Power of Attorney-Defendant Nos.3 and 4. The intervenor-Opposite Party Nos.1 and 2 filed a petition under Order 1 Rule 10 C.P.C. to be

impleaded as parties claiming right over the suit land on the basis of registered sale deeds executed in their favour by the Defendant Nos.1 and 2 through their Power of Attorney holders on 25th March, 2015 and 2nd May, 2015. The intervenors being aware of the fact that the sale deeds executed in their favour are fraudulent in nature, had filed C.S. No.250 of 2018 for return of consideration money from the vendors. As such, they have no claim to contest the relief claimed in the present suit filed by the Plaintiff-Petitioner. He further submits that they are neither necessary nor proper parties to the suit in view of the ratio decided in the case of *Udit Narain Singh Malpaharia –v- Additional Member, Board of Revenue, Bihar and another*, reported in AIR 1963 SC 786. Learned trial Court erroneously holding that the Opposite Party Nos. 1 and 2 have direct interest in the property, allowed the application, which is not sustainable in the eyes of law. Hence, he prays for setting aside the impugned order under Annexure-4.

4. Mr. Patanaik, learned counsel, who appears on behalf of caveator-Opposite Party Nos.1 and 2, refuting such submission, contends that the Opposite Party Nos.1 and 2 may not be necessary party to the suit. But, they are proper parties to the suit as their presence is necessary for complete adjudication of the suit. Since the Opposite Party Nos.1 and 2 claim return of money in respect of the self-same land over which the Plaintiff claimed right, title and interest, they should be impleaded as parties to the suit. Thus, learned trial Court has committed no error in passing the impugned order under Annexure-4.

5. Considering the submission made by learned counsel for the parties and on perusal of the record, this Court finds that C.S. No.381 of 2015 and C.S. No.250 of 2018 have been filed by the Petitioner and Defendant Nos.1 and 2 respectively for the self-same property. When the Petitioner claimed right, title and interest over the suit property, the Opposite Party Nos.1 and 2 claimed return of money in respect of the suit property. In view of the above, this Court finds that the presence of Opposite Party Nos.1 and 2 will be required for complete adjudication of the suit filed by the Petitioner. As such, learned trial Court has committed no error in allowing the application under Order 1 Rule 10 C.P.C. filed by the Opposite Party Nos.1 and 2.

6. In view of the above, the CMP being devoid of any merit stands dismissed.

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

(K.R. Mohapatra)
Judge

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