

IN THE HIGH COURT OF ORISSA AT CUTTACK
CMP No. 786 OF 2022

Upendra Patra and others ***Petitioners***

Mr. Sidhartha Mishra, Advocate

-versus-

State of Odisha and others ***Opp. Parties***

Mr. Swayambhu Mishra,
Additional Standing Counsel

CORAM:
JUSTICE K.R. MOHAPATRA

ORDER
18.10.2022

Order No.

2. 1. This matter is taken up through hybrid mode.
2. The Petitioners in this CMP seek to assail the order dated 7th May, 2022 passed by learned District Judge, Bhadrak in R.F.A. No.73 of 2017, whereby an application under Order 1 Rule 10 (2) C.P.C. filed by the present Petitioners has been rejected.
3. Mr. Mishra, learned counsel for the Petitioners submits that the Opposite Party Nos.2 to 7 being the Plaintiffs filed Civil Suit No.271 of 2009-I before learned Civil Judge (Junior Division), Chandbali for declaration of their right, title and interest over the suit land and for permanent injunction. Since the property was recorded in the name of the State Government, notice under Order 1 Rule 8 C.P.C. was taken and the Opposite Party Nos.10 to 13 being the villagers responded to the said notice and were impleaded as Defendants. The suit was decreed

in favour of the Plaintiffs- Opposite Party Nos. 2 to 9. Assailing the same, the Opposite Party Nos. 10 to 13 (Villagers) preferred RFA No. 73 of 2017, which is pending before learned District Judge, Bhadrak for adjudication. The present Petitioners being the co-villagers filed an application under Order 1 Rule 10(2) C.P.C. to be impleaded as parties to the said appeal. The same being rejected by virtue of the impugned order, this CMP has been filed.

4. Mr. Mishra, learned Counsel for the Petitioners submits that the suit was decreed on contest relying upon the OLR Case No.394 of 1976 initiated under Section 4(2) of the Orissa Land Reforms Act, 1960. Had the villagers who were representing the village contested the suit, the result would have been otherwise. However, the villagers have filed the appeal but have not stated some relevant question of fact and law in their appeal memo. Further, there are some developments in the meanwhile, which have not been brought to the notice of learned appellate court as yet. The State Government has not contested the suit. It has not also brought the subsequent developments to the notice of learned appellate court as yet. The land in question has been recorded as Gochar and has been used by the villagers for their communal purpose as well as access to the main road. Hence, the Petitioners are necessary parties to the appeal. This material aspect although raised by the Petitioners in their application for intervention, but was not considered by learned appellate Court. Hence, the impugned order is not sustainable.

5. Mr. Mishra, learned Additional Standing Counsel appearing for Opposite Party No.1 submits that pursuant to the notice under Order 1 Rule 8 C.P.C., the Petitioners never responded and contested the suit filed against the State and the villagers. The villagers are being represented and are contesting the appeal, the Petitioners are neither necessary nor proper parties to the appeal. Learned appellate court considering the same has passed the impugned order. Hence, the CMP being devoid of any merit is liable to be dismissed.

6. Considering the rival contentions of learned counsel for the parties and on perusal of the record, this Court finds that the representatives of the villagers have filed the appeal and are contesting the same. The Petitioners though claimed that the Opposite Party Nos.10 to 13 did not contest the suit, but since they have filed the appeal challenging the judgment and decree passed in the suit, it cannot be said that they are not protecting the interest of the villagers. Mr. Mishra, however, submits that some relevant points of fact and law were not taken in the appeal memo. Since the matter has not come up for hearing, it is premature at this stage to make any observation on the said submission. From the above, it appears that the villagers are being represented by Opposite Party Nos.10 to 13 and have filed the appeal. Further, pursuant to the notice under Order 1 Rule 8 C.P.C., the Petitioners preferred not to contest the suit. Thus, a prayer for impletion of some more villagers as parties to the appeal at this belated stage is not entertainable. There is also no

allegation against the appellants that they are not contesting the appeal. In view of the above, the impugned order warrants no interference.

7. The CMP is disposed of with an observation that the Petitioners, if so advised, may work out their remedy in accordance with law.

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

(K.R. Mohapatra)
Judge



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