

IN THE HIGH COURT OF ORISSA AT CUTTACK

CMP No. 797 OF 2022

Gandharba Das and others

.... Petitioners

Ms. S.S. Deo, Advocate

-versus-

Soumya Ranjan Samantaray

.... Opp. Party

CORAM:

JUSTICE K.R. MOHAPATRA

ORDER

05.09.2022

Order No.

01. 1. This matter is taken up through hybrid mode.
2. The Petitioners in this CMP seek to assail the order dated 7th July, 2022 (Annexure-3) passed by learned 3rd Additional Civil Judge (Senior Division), Cuttack in C.S. No.1197 of 2016, directing the Defendant Nos.2 to 4 and 6 to provide the details of legal representatives of the deceased Defendant No.5.
3. It is submitted by Ms. Deo, learned counsel for the Petitioners that during pendency of the suit, the Defendant No.5 died on 23rd January, 2018. The Plaintiff without filing a petition for substitution of the deceased Defendant No.5 within the stipulated period, took several adjournments and ultimately filed a misconceived application for a direction to the Defendant Nos.2 to 4 and 6 to provide the details of legal heirs of the deceased Defendant No.5 to enable him to file a petition for substitution. Learned trial Court without considering the position of law to the effect that the Plaintiff has to file petition for substitution within the stipulated period and the Defendants have no role to play in filing such petition, allowed the said application and directed the Defendant Nos.2 to 4 and 6 to provide the details of legal heirs of the deceased Defendant No.5. Assailing the same, this CMP has been filed.

4. Taking into consideration the submission made by learned counsel for the Petitioner and on perusal of the material on record including the impugned order under Annexure-3, it appears that the Plaintiff is a stranger to the family of Defendants. He has no idea about the genealogy of Defendants. It also appears that in spite of his best efforts, he could not get the details of legal heirs of the deceased Defendant No.5, for which he could not file the petition for substitution in time. Ultimately he filed the aforesaid application with a prayer to direct the Defendant Nos.2 to 4 and 6 to provide the details of legal heirs of deceased Defendant No.5. Although there is no provision under the Code of Civil Procedure to ask the Defendants to give details of the deceased Defendant No.5 for substitution, but in order to meet the ends of justice and to avoid further delay in disposal of the suit, learned trial Court by exercising its discretion allowed the said application and directed the Defendant Nos.2 to 4 and 6 to provide the details of legal heirs of the deceased Defendant No.5. Learned counsel for the Petitioners could not point out as to how they are prejudiced by the said direction. On the other hand, by providing details of legal heirs of the deceased Defendant No.5, it would be easier to substitute said deceased Defendant No.5 and to proceed with the suit.

5. In view of the above, I find no infirmity in the impugned order under Annexure-3.

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

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

(K.R. Mohapatra)
Judge