

IN THE HIGH COURT OF ORISSA AT CUTTACK
CMP NO. 801 OF 2022

P. Roja Patra **Petitioner**
Mr. Soumya Mishra, Advocate
-versus-
Ch. Bhagya Laxmi and others **Opp. Parties**

CORAM:
JUSTICE K.R. MOHAPATRA

ORDER
12.09.2022

Order No.

1. This matter is taken up through hybrid mode.
2. The Petitioner in this CMP seeks to assail the order dated 23th April, 2022 (Annexure-9) passed by learned Senior Civil Judge, Jeypore in C.S. No. 111 of 2010, rejecting an application filed by Defendant No.1-Petitioner under Order 1 Rule 10 C.P.C.
3. Mr. Mishra, learned counsel for the Petitioner submits that the suit has been filed by the Plaintiffs-Opposite Party Nos.1 to 5 for the following relief:

“The Plaintiff values the suit for the purpose of jurisdiction and valuation as under:

(a) Damages in lieu of rent @ Rs.20,000/- P/M for 12 months hence, amounting to Rs.2,40,000/- and paid the court fee of Rs.8,385.00, as required u/s 7 of Court fees Act as amended in Orissa presently.

Therefore it is humbly prayed that the honourable Court may be pleased to decree the suit in favour of the Plaintiff and against the defendant or any person claiming through her and grant following reliefs.

(a) Direct immediate vacation of the suit premises and on default, evict by process of law with damages of at least five lakhs.

(b) Grant damages for losses suffered by Plaintiffs in obtaining the loan for construction of the upstairs and due to obstructions could not finish construction work and the building materials are destroyed and stolen; and such materials cost rupees five lakhs.

(c) And grant such other relief as the Honourable Court deems fit and proper.

For which act of kindness the Plaintiffs will remain ever prone to justice.”

4. Mr. Mishra, learned counsel for the Petitioner submits that in terms of a tripartite agreement between the Defendant No.1-Petitioner, Plaintiffs and partners of partnership firm, namely, M/s. Home Needs in which Defendant Nos. 2 and 3 are partners, the Plaintiffs were advanced with a sum of Rs.10.00 lakh. In the meantime, one of the partners, namely, Sri K. Mohan Rao, Defendant No.2, retired from partnership and Defendant No.3 introduced a new partner, namely, Dinesh Patro. Hence, an application under Order 1 Rule 10 C.P.C. was filed to implead said Dinesh Patro as a party to the suit. Learned trial court by misconstruing the petition under Order 1 Rule 10 C.P.C. holding that said Dinesh Patro is neither a necessary nor a proper party to the suit as his presence is not necessary for adjudication of the matter in dispute, rejected the petition. Hence, this CMP has been filed.

5. It is his submission that the Defendant No.1-Petitioner has also filed a counter claim along with written statement claiming recovery of advance consideration money, which was paid to the Plaintiffs by the partnership firm. Hence, impleation of said Dinesh Patro as a party to the suit is a formality only to regularize the suit. Since he has been taken as a new partner to the partnership firm, he is a necessary party to the suit. In

absence of said Dinesh Patra, the plaint as well as counter claim may not be maintainable. He, therefore, prays for setting aside the impugned order under Annexure-9 and to direct learned trial Court to implead Dinesh Patro as a party to the suit.

6. Taking into consideration the submission made by learned counsel for the Petitioner and on perusal of the record, it reveals that the suit has been filed against the Defendants in their individual capacity and not as the partners of partnership firm. Thus, reconstitution of partnership firm has nothing to do with the adjudication of the suit. The Plaintiffs are *dominus litis* and have chosen the Defendants to claim relief in the plaint. Hence, a prayer to implead Dinesh Patro as a party to the suit on the plea that he has been taken as a partner in the partnership firm, namely, M/s. Home Needs is of no consequence for adjudication of the suit.

7. In view of the above, I find no infirmity in the impugned order under Annexure-9 passed by learned trial Court rejecting the petition under Order 1 Rule 10 C.P.C. As such, the CMP being devoid of any merit stands dismissed.

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

(K.R. Mohapatra)
Judge

bks