

IN THE HIGH COURT OF ORISSA AT CUTTACK

CMP NO.1125 OF 2019

Bhagaban Dash

....

Petitioner

Mr.A.P.Bose, Adv.

-versus-

Dibakar Mishra & ors.

....

Opposite Party(s)

Mr.K.K.Mishra, Adv.

**CORAM:
JUSTICE BISWANATH RATH**

ORDER

14.2.2022

**Order
No.**

7.

1. Heard learned counsel for the Parties.
2. Bringing an amended Plaint but however containing the signatures of two of the dead Plaintiffs, learned counsel for the Petitioner objects to the impugned order on the premises that the trial court surprisingly refused to entertain such Petition even after bringing to the notice of the trial court of the above aspect.
3. Mr.K.K.Mishra, learned counsel for the O.Ps. however did not dispute the dead position of two Defendants even before bringing such amended Plaint.
3. Keeping in view the allegation and entering into the observation in the impugned order, this Court finds, the trial court in acceptance of such amended Plaint observed, there is no difficulty in bringing such amendment as the suit was in representative capacity. Signatures of two dead persons remain immaterial. For the opinion

of this Court, once some of the Plaintiffs die, though there is no dispute in bringing the amended Plaint involving allowing amendment, if any, it must be under the signature of the surviving Plaintiffs or at least one of the Plaintiffs as the suit is in the representative capacity but there is no room for filing the amended Plaint bearing the signature of a Party not surviving on the date of signing or filing even. Entertaining such attempts will be absolutely to encourage fraud on Court, which serious aspects cannot be lost sight of.

4. Keeping this in view, this Court observes, the impugned order dated 8.3.2019 passed by the Civil Judge (Jr.Divn.), Puri in T.S. No.350 of 1992-I becomes bad and accordingly sets aside the same. This Court however observes, in the event the surviving Plaintiffs are interested to bring an amended Plaint, while they may file an Application for deletion of the name of the dead Plaintiffs, they are also at liberty to bring amended Plaint back under the signature of surviving Plaintiff or Plaintiffs, if any. Further in the event both the Parties cooperate, T.S. No.350 of 1992-I be attempted to be disposed of at least within a period of nine months from the date of receipt of copy of this order.

5. With the above direction, the CMP stands disposed of.

(Biswanath Rath)
Judge