

IN THE HIGH COURT OF ORISSA AT CUTTACK

CMP No. 822 OF 2022

Rajat Kumar Routray and others ***Petitioners***
Mr. Soumya Sourav, Advocate

-versus-

Collector, Khordha and another ***Opp. Parties***
Mr. Suvashish Pattnaik,
Additional Government Advocate

CORAM:
JUSTICE K.R. MOHAPATRA

ORDER
13.09.2022

Order No.

2.
 1. This matter is taken up through hybrid mode.
 2. The Petitioners in this CMP seek to assail the order dated 29th April, 2021 (Annexure-6) passed by learned Civil Judge (Senior Division), Bhubaneswar in C.M.A. No.52 of 2021 (arising out of T.S. No.51 of 1985), whereby prayer for deletion of the name of Opposite Party Nos.2 and 4 in CMA, namely, Labhabati Dei and Kailash Chandra Pradhan, has been turned down.
 3. Mr. Sourav, learned counsel for the Petitioners submits that T.S. No.51 of 1985 was filed for declaration and mandatory injunction. The suit was dismissed for default for which the Petitioners filed C.M.A. No.52 of 2021 under Order IX Rule 9 C.P.C. for restoration. Before filing of C.M.A., the Opposite Party Nos.2 and 4 had already died. The Petitioners had no knowledge about the same. Hence, they filed CMA No.52 of 2021 impleading them as parties. It is his submission that the substituted legal heirs of Opposite Party Nos.2 and 4 ought to have been made parties to C.M.A. During pendency of C.M.A.,

the Opposite Party Nos.1 and 3 proceeded to make construction over the suit land. Hence, an application has been filed under Section 151 C.P.C. to restrain the Opposite Parties from making any construction over the suit land. During pendency of said interim application, the Petitioners came to know about the death of Opposite Party Nos.2 and 4. Hence, they prayed for deletion of the name of Opposite Party Nos.2 and 4 in the interim application. Said application was rejected vide order dated 27th April, 2022 under Annexure-5. Hence, the CMP has been filed assailing the said order.

4. In course of hearing, Mr. Sourav, learned counsel for the Petitioners submits that proper procedure would be to implead the legal heirs of Opposite Party No.2 and 4 in C.M.A. No.52 of 2021 and file a fresh application under Section 151 C.P.C.. He, therefore, submits that he will take appropriate steps before learned trial Court.

6. In view of the above, the CMP is disposed of with an observation that if the Petitioners file an application to implead the legal heirs of the deceased Opposite Party Nos.2 and 4 as parties to the C.M.A. No.52 of 2021, the same shall be considered in accordance with law.

6. The Petitioners may also file interim application in said C.M.A. No.51 of 2021, if any cause of action arises.

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

(K.R. Mohapatra)
Judge