

IN THE HIGH COURT OF ORISSA AT CUTTACK

CMP No. 828 OF 2022

Manaswani Panda and others* *Petitioners

Mr. Laxman Pradhan, Advocate

-versus-

Puspanjali Panda and other* *Opp. Parties

CORAM:

JUSTICE K.R. MOHAPATRA

ORDER

26.09.2022

Order No.

01. 1. This matter is taken up through hybrid mode.
2. Order dated 30th June, 2022 (Annexure-4) passed by learned Civil Judge (Senior Division), Blliguda in Execution Proceeding No.02 of 2014 is under challenge in this CMP, whereby an application filed by the Opposite Party No.1 under Order 1 Rule 10 C.P.C. has been rejected.
3. Mr. Pradhan, learned counsel for the Petitioners submits that Smt. Puspanjali Panda-Opposite Party No.1 describing herself to be the widow of Arakhita Panda, filed C.S. No.48 of 2011 under Annexure-1 claiming death benefit of said Arakhita Panda, as his nominee. The suit was decreed vide judgment dated 9th December, 2013 with the following order:

“ORDER

The suit is decreed on contest against the defendants but in the circumstances without cost. The plaintiff is declared as the sole nominee of her deceased husband Arakhita Panda who was serving as messenger under defendant No.1 and the defendants are directed to pay the entire amount to the plaintiff wherein the plaintiff has been the nominee of her deceased husband Arakhita Panda.”

Accordingly, the Opposite Party No.1 filed Execution Proceeding No.2 of 2014 for execution of the decree.

4. It is submitted by Mr. Pradhan, learned counsel that the Petitioner No.1 is the legally married wife of said Arakhita

Panda. But without impleading her as a party, the suit was filed by Opposite Party No.1 describing herself to be the legally married wife of said Arakhita Panda. When the Petitioner No.1 came to know about the same, she filed an application under Order 1 Rule 10 C.P.C. before the executing Court to be impleaded as a party to the suit, which was rejected. He further submits that the Opposite Party No.1 had earlier filed Intest Case No.01 of 2005 before learned Civil Judge (Senior Division), Balliguda claiming to be the legally married wife of said Arakhita Panda, but the same was dismissed on 27th April, 2006 and confirmed by the appellate Court. As such, the C.S. No.48 of 2011 was not maintainable. Thus, the Petitioner is a necessary party to the execution proceeding. As such, the impugned order is liable to be set aside.

5. Upon hearing learned counsel for the Petitioner and on perusal of the record, it appears that the Petitioner No.1 claims herself to be the legally married wife of Arakhita Panda. Since a decree has been passed to release the death benefit of Arakhita Panda in favour of Opposite Party No.1 as she is his nominee, the Petitioner No.1 is not entitled to lay any claim over the death benefit of said Arakhita Panda in the said execution proceeding.

6. In that view of the matter, the CMP is disposed of with an observation that the Petitioners, if so advised, may work out their remedy in accordance with law for a declaration that she is the legally married wife of Arakhita Panda and for other reliefs.

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

(K.R. Mohapatra)
Judge