

IN THE HIGH COURT OF ORISSA AT CUTTACK

CMP No. 838 of 2022

Nrusingha Charan Paramguru* *Petitioner

Mr.Ashok Kumar Mohapatra-1, Advocate

-versus-

Sarat Panda and others

.... *Opp. Parties*

CORAM:

JUSTICE K.R. MOHAPATRA

ORDER

17.10.2022

Order No.

3. 1. This matter is taken up through hybrid mode.
2. Mr. Mohapatra, learned counsel for the Petitioner submits that substitution as against Opposite Party No.7 is not required as her legal heir, namely, Opposite Party No.1 is already available on record. He, therefore, prays for deleting the name of Opposite Party No.7 from cause title of the brief.
3. Name of Opposite Party No.7 is deleted at the risk of the Petitioner.
4. Mr. Bose, learned counsel submits that he along with his associates have already entered appearance on behalf of Opposite Party Nos.1 to 6 by filing Vakalatnama, but the same is not on record.
5. Office is directed to tag the Vakalatnama so filed to the record.
6. Notice on Opposite Party Nos. 16, 17, 18 is treated to be sufficient.
7. Although notice on Opposite Party Nos. 8, 10, 11, 12, 13 and 15 appears to have not been served, but most of the

contesting Opposite Parties have already appeared through their counsel. Hence, this Court takes up the matter on merit.

8. Petitioner in this CMP seeks to assail the order dated 8th August, 2022 (Annexure-1) passed by learned Civil Judge (Junior Division), Bhubaneswar in CS No.122 of 2004, whereby an application filed under Order 1 Rule 10(2) read with Section 151 CPC to implead Lord Lingaraj Mahaprabhu Bijee at Bhubaneswar, as Defendant No.5, has been rejected.

9. Mr.Mohapatra, learned counsel for the Petitioner submits that initially the property stood recorded in the name of father of the Plaintiff and one Harihar Pujapanda as per 1962 ROR. But subsequently, *suo motu* OEA Case No.63 of 1996 was initiated. No order could be passed therein, as the case record was misplaced. But subsequently, *suo motu* OEA Case No.929 of 2016 was initiated and vide order dated 8th March, 2021, the OEA Collector-cum-Tahasildar, Bhubaneswar settled Khata No.2215 in the name of Lord Lingaraj Mahaprabhu. The ROR has also been published in the name of Lord Lingaraj. Hence, Lord Lingaraj Mahaprabhu Bijee at Bhubaneswar is a necessary party to the suit. Learned trial Court on a flimsy ground that the order passed in OEA Case No.929 of 2016 is sub judice before this Court and no order either confirming or setting aside the same has been passed, refused to implead said Lord Lingaraj Mahaprabhu Bijee at Bhubaneswar, as Defendant No.5 to the suit. It is submitted by Mr. Mohapatra, learned counsel for the Petitioner that the suit has been filed for declaration of right, title and permanent injunction. As the land has already been settled in the name of Lord Lingaraj Mahaprabhu during pendency of the suit, it is a necessary party

in whose absence no effective adjudication of the suit can be made. This aspect was lost sight of by learned trial Court while adjudicating the petition.

10. Mr. Bose, learned counsel for Opposite Party Nos. 1 to 6, on the other hand submits that similar such application was rejected by learned trial Court on an earlier occasion and the said order has attained finality being not challenged. As such, subsequent application under the said provision is not maintainable, as principle of res judicata is also applicable to different stages of a suit or proceeding. He, therefore, submits that learned trial Court has committed no error in rejecting an application filed under Order 1 Rule 10(2) CPC.

11. Taking into consideration the rival contentions of learned counsel for the parties and on perusal of record, it appears that vide order dated 8th March, 2021, the OEA Collector-cum-Tahasildar, Bhubaneswar has settled Khata No.2215 in the name of Lord Lingaraj Mohapatrabhu Bije at Bhubaneswar in OEA Case No.929 of 2016. In that view of the matter, Lord Lingaraja is a necessary party to the suit. Mr. Bose, learned counsel for Opposite Party Nos.1 to 6 could not produce any material to show that under what circumstances earlier application under Order 1 Rule 10(2) CPC to implead Lord Lingaraj Mohapraphu was rejected. Mr. Mohapatra, learned counsel for the Petitioner, however, submits that at the relevant time, the land was not settled in the name of Lord Lingaraj. Hence, the said application was rejected. As such, there is no bar to entertain the subsequent application under Order 1 Rule 10(2) CPC in the changed circumstances. Mr. Bose, learned counsel for Opposite Party Nos.1 to 6 also raises

objection to the effect that such an application should not be entertained at a belated stage. Such contention is not sustainable as the land was settled in the name of Lord Lingaraj Mohaprabhu vide order dated 8th March, 2021, i.e., during pendency of the suit. In view of the above, the impugned order under Annexure-1 is not sustainable and hence set aside.

12. Accordingly, the Petitioner/Plaintiff is directed to implead Lord Lingaraj Mohaprabhu Bije at Bhubaneswar as well as Commissioner of Endowments, Odisha, Bhubaneswar as parties to the suit. The aforesaid exercise shall be completed within a period of two weeks hence and thereafter, learned trial Court shall make an endeavour to proceed with the suit in accordance with law and see that the suit is disposed of early.

13. Since the above order is passed in absence of Opposite Party Nos. 8, 10, 11, 12, 13 and 15 they are at liberty to move this Court for variation of this order if they feel aggrieved.

14. Interim order dated 9th September, 2022 passed in IA No.878 of 2022 stands vacated.

Issue urgent certified copy of the order on proper application.

(K.R. Mohapatra)
Judge