

IN THE HIGH COURT OF ORISSA AT CUTTACK
CMP No. 903 OF 2022

Pravakar Patra ***Petitioner***
Mr. Swarup Kumar Patnaik, Advocate
-versus-
Manoranjan Thatoi and others ***Opp. Parties***

CORAM:
JUSTICE K.R. MOHAPATRA

Order No.

ORDER
10.10.2022

01. 1. This matter is taken up through hybrid mode.
2. The Petitioner in this CMP seeks to assail the order dated 19th March, 2021 (Annexure-9) passed by learned Additional Senior Civil Judge, Baripada in C.S. No.470 of 2014, whereby rejecting an application filed by the Plaintiff to withdraw the suit under Order XXIII Rule 1 C.P.C., learned trial Court allowed an application filed by the Defendant No.2 to be transposed as Plaintiff entertaining an application under Order 1 Rule 10 C.P.C. read with Order XXIII Rule 1-A C.P.C.
3. Mr. Patnaik, learned counsel for the Petitioner submits that the Plaintiff, namely, Smt. Saraswati Patra, filed a suit for declaration of right, title and interest and other ancillary relief in respect of the suit property. During pendency of the suit, she filed an application under Order XXIII Rule 1 C.P.C. to withdraw the suit. Defendant No.2, who has also filed C.S.

No.409 of 2017 for declaration of right, title and interest in respect of the self-same property, has filed an application under Order 1 Rule 10 (2) C.P.C. read with Order XXIII Rule 1 (A) C.P.C. to be transposed as Plaintiff. Learned trial Court without appreciating that Smt. Saraswati Patra and Defendant No.2, namely, Manoranjan Thatoi had conflicting interest over the suit property, rejected the petition for withdrawal of the suit and allowed the Defendant No.2, namely, Manoranjan Thatoi, to be transposed as Plaintiff. Assailing the same, this CMP has been filed.

4. It is submitted by Mr. Patnaik, learned counsel for the Petitioner that although the impugned order was passed on 19th March, 2021, neither the suit filed by Defendant No.2, i.e. C.S. No.409 of 2017, nor the present suit i.e. C.S. No.470 of 2014 has proceeded further. Learned trial Court has committed palpable error of law in rejecting the application of the Plaintiff for withdrawal of the suit and transposing the present Defendant No.2 as Plaintiff. It is his submission that in view of the impugned order, the present Petitioner, who is Defendant No.1 in C.S. No.470 of 2014, is seriously prejudiced. In support of his case, he relied upon the decision in the case of **R. Dhanasundari @ R. Rajeswari –v- A.N. Umakanth and others**, reported in (2020) 14 SCC 1, wherein it has been held as under:

“11. As per Rule 1-A ibid., in the eventuality of plaintiff withdrawing the suit or abandoning his claim, a pro forma defendant, who has a substantial question to

be decided against the co-defendant, is entitled to seek his transposition as plaintiff for determination of such a question against the said co-defendant in the given suit itself. The very nature of the provisions contained in Rule 1(A) ibid. leaves nothing to doubt that the powers of the Court to grant such a prayer for transposition are very wide and could be exercised for effectual and comprehensive adjudication of all the matters in controversy in the suit. The basic requirement for exercise of powers under Rule 1-A ibid. would be to examine if the plaintiff is seeking to withdraw or to abandon his claim under Rule 1 of Order 23 and the defendant seeking transposition is having an interest in the subject matter of the suit and thereby, a substantial question to be adjudicated against the other defendant. In such a situation, the pro forma defendant is to be allowed to continue with the same suit as plaintiff, thereby averting the likelihood of his right being defeated and also obviating the unnecessary multiplicity of proceedings.”

5. He further relied upon the decision in the case of ***Piyush Hasmukhlal Desai –v- International Society for Krishna Consciousness (ISKCON)***, reported in 2015 SCC Online Ori 3, wherein it has been held as under:

“13. Thus, transposition of defendant as plaintiff can be made only when the defendant has some interest in common with that of the plaintiff. A proforma defendant can be transposed as plaintiff only when interest and identity are same between the plaintiff and one or more of the defendants. A person, whose interest is adverse to the plaintiff, cannot be permitted to be transposed as plaintiff.”

He, therefore, prays for setting aside the impugned order under Annexure-9.

6. Upon hearing learned counsel for the Petitioner and on perusal of the case record, it appears that the Defendant No.2 is

claiming right, title and interest over the suit property against the Defendant No.1, the present Petitioner. In fact, the Defendant No.2, namely, Manoranjan Thatoi, has also filed a suit i.e. C.S. No.409 of 2017 claiming right, title and interest over the suit property. Parties to the present suit are also parties to C.S. No.409 of 2017.

7. Mr. Patnaik, learned counsel for the Petitioner submits that although the Plaintiff-Smt. Saraswati Patra in the present suit had no conflict of interest with the Defendant No.2, but C.S. No.409 of 2017 has been filed by the Defendant No.2 impleading the present Plaintiff as Defendant No.2. A prayer has also been made in the said suit to declare that the sale deed executed by the Defendant No.2, namely, Saraswati Patra, in the said suit in favour of the present Petitioner to be null and void. In view of the above, the Defendant No.2 has conflict of interest with said Saraswati Patra. Thus, the Defendant No.2 could not have been transposed as Plaintiff.

8. Such a contention is not legally sustainable as the Defendant No.2 in the present suit also claims right, title and interest over the suit property. In the present suit, Defendant No.2 has no conflicting interest with Saraswati Patra, the Plaintiff. In view of the above, the case laws cited do not have any assistance to the Petitioner-Defendant No.1. Learned trial Court on scrutiny of the record has opined that the causes of action in both the suits are different and the prayers made in both the suits are also different. On perusal of the case record,

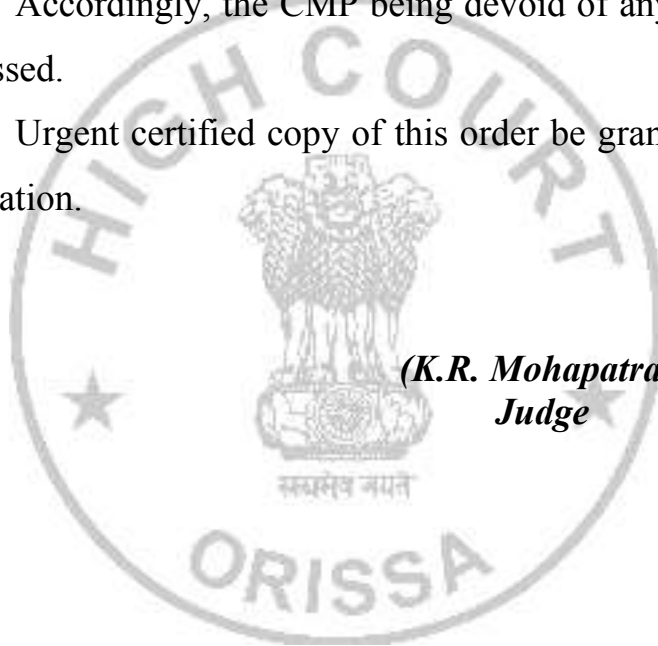
it appears that the Defendant No.2 has claimed right, title and interest over the suit property involved in both the suits. Relief in both the suits is sought for against the Defendant No.2-the present Petitioner. Moreover, in the meantime more than one and half year have already elapsed from the date of impugned order and delay in filing the CMP is not explained.

9. In view of the above, I am not inclined to entertain this CMP.

10. Accordingly, the CMP being devoid of any merit stands dismissed.

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

(K.R. Mohapatra)
Judge



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