

IN THE HIGH COURT OF ORISSA AT CUTTACK

CMP No. 934 OF 2022

***Sri Chaitanya Mahaprabu Bije Nija* *Petitioner*
***Gruha Marfat Sri Kartik Chandra Das*
Adhikari****

Mr. P.C. Dash, Advocate

-versus-

Sri Rabindra Das Adhikari and others* *Opp. Parties

**CORAM:
JUSTICE K.R. MOHAPATRA**

**ORDER
18.10.2022**

Order No.

01. 1. This matter is taken up through hybrid mode.
2. The Petitioner in this CMP seeks to assail the order dated 29th August, 2022 (Annexure-5) passed by learned 1st Additional Senior Civil Judge, Balasore in T.S. No.362 of 2002, whereby an application filed by the Petitioner Under Order 1 Rule 10 C.P.C. has been rejected.
3. Mr. Dash, learned counsel for the Petitioner submits that during cross-examination of D.W.5, it came to light that Biren Chandra Rana died leaving behind Defendants and their five sisters, namely, Basanti, Niyati, Basumati, Damayanti and Bhanati and their mother Ambika. They are necessary parties to the suit. In their absence, the suit will fail. In that view of the matter, the Plaintiff-Petitioner filed an application under Order 1 Rule 10 C.P.C. to implead them as parties to the suit. The same was rejected on a flimsy ground that the Petitioner had earlier knew that the Defendants have five sisters. But he

did not take any steps to implead them as parties to the suit before commencement of hearing. Such a ground is not sustainable in the eyes of law as Order 1 Rule 10 C.P.C. clearly provides that the Court has discretion to implead parties to the suit at any stage of the suit for its complete adjudication. It is his submission that the suit will definitely fail in absence of five sisters of the Defendants. Hence, learned trial Court ought to have allowed the petition under Order 1 Rule 10 C.P.C.

4. Considering the submission made by learned counsel for the Petitioner and on perusal of the record, it appears that the Defendants have categorically stated at Paragraph-3 of the written statement that Biren Chandra Rana died leaving behind the Defendants and five sisters as well as mother Ambika. The written statement was filed in the year, 2003. In the meantime, nineteen years have already elapsed and hearing of the suit has already commenced. The Plaintiff had knowledge of such fact much before commencement of hearing. In view of the above, learned trial Court has committed no error in dismissing the petition under Order 1 Rule 10 C.P.C., which was filed in the midst of trial of the suit.

5. 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