

IN THE HIGH COURT OF ORISSA AT CUTTACK
CMP NO. 954 OF 2022

Vineet Kapoor *Petitioner*
Mr. Bhaskar Chandra Panda, Advocate
-versus-
Sudhi Kuamr Senapati *Opp. Party*

CORAM:
JUSTICE K.R. MOHAPATRA

ORDER
18.11.2022

Order No.

3. 1. This matter is taken up through hybrid mode.
2. Order dated 23rd August, 2022 (Annexure-6) passed in C.S. No. 82 of 2013, whereby learned Senior Civil Judge, Rourkela dismissed the application filed by the Petitioner for analogous hearing of C.S. No.82 of 2013 with C.S. No. 11 of 2014 filed by him.
3. Mr. Panda, learned counsel for the Petitioner submits that C.S. No.82 of 2013 has been filed by the Opposite Party for eviction of the Petitioner. In the said suit, the Petitioner being the Defendant took a stand that he is the tenant under Opposite Party and is running his business in the suit premises. As other co-sharers created disturbances in his possession and claimed rent, he approached the Opposite Party to resolve the same. Due to inaction of Opposite Party, the Defendant was constrained to enter into an agreement with other co-sharers of Opposite Party and paying rent to them. Subsequently, the Petitioner filed C.S. No. 11 of 2014, which is pending before the self-same Court, for a declaration that the Defendants therein,

namely, Opposite Party and his co-sharers should have resolved the dispute between themselves with regard to the suit property and till the dispute is resolved, the Petitioner should not be evicted from the suit property. Since the Petitioner and Opposite Party are common in both the suits and the subject matter of dispute is the same, both the suits should be heard analogously to save the time of the Court and to avoid multiplicity of litigation and conflict of decision. However, learned trial Court most erroneously held that considerations in both the suits are different and the issues involved in both the suits are also different. When C.S. No. 82 of 2013 is at the stage of hearing, the Defendant has not yet appeared in C.S. No.11 of 2014. Thus, direction for analogous hearing of both the suits will certainly delay in disposal of C.S. No. 82 of 2013. It is his submission that the consideration on which the petition for analogous hearing of both the suits was rejected is not sustainable in law. Hence, the impugned order under Annexure-6 is liable to be set aside.

4. Upon hearing learned counsel for the Petitioner and on perusal of the record, it appears that the Petitioner and Opposite Party are common parties in both the suits and the subject matter of dispute is also the same in both the suits. However, although C.S. No. 82 of 2013 has been filed by Opposite Party for eviction of the Petitioner, but in C.S No. 11 of 2014, the Plaintiff claims that there is a dispute between the Opposite Party and his co-sharers with regard to the ownership of the suit property and it should be resolved between them and he should not be evicted from the suit property till the dispute is resolved.

Thus, consideration of both the suits is quite different. The issues involved in both the suits are also not one and the same. When C.S. No.11 of 2014 is at a very primary stage, C.S. No. 82 of 2013 is at the stage of hearing.

5. Mr. Panda, learned counsel for the Petitioner in support of his contention relied upon the case law in ***Dr. Guru Prasad Mohanty and others –v- Bijoy Kumar Das***, reported in AIR 1984 Ori 209 in which this Court has held as under:

“ XXX XXX XXX

From the above, there can be no doubt that the observation of the Supreme Court clearly indicates that the Court has the power to direct the two suits between the same parties where common question arises to be tried together.”

6. On perusal of the case law decided, it appears that the ratio decided in the case of *Dr. Guru Prasad Mohanty* (supra) is of no assistance to the Petitioner in view of the discussions made above. Thus, I find no infirmity in the impugned order.

7. 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

bks