

IN THE HIGH COURT OF ORISSA AT CUTTACK
CMP No. 960 OF 2022

Kumari Kalyanbi Gajapati ***Petitioner***

Mr. Panchanan Panigrahi, Advocate
-versus-

Sarvagnya Jagannath Gajapati ***Opp. Parties***
Narayan Dev and others

Mr. Susanta Kumar Dash, Advocate

CORAM:
JUSTICE K.R. MOHAPATRA

Order No.

ORDER
31.10.2022

2. 1. This matter is taken up through hybrid mode.
2. 2. Order dated 22nd September, 2022 (Annexure-10) passed in C.S. No.22 of 2006 is under challenge in this CMP, whereby learned Civil Judge (Senior Division), Paralakhemundi rejected an application filed by Defendant No.2-Petitioner under Order XXVI Rule 10-A C.P.C. to send the Vakalatnama filed on 24th June, 2006 along with Vakalatnama filed by her on 4th January, 2021 to the handwriting expert for comparison of her signature and submit report.
3. 3. Mr. Panigrahi, learned counsel for the Petitioner submits that upon receipt of summons, Defendant No.1-father of the Defendants appeared and filed his written statement. But along with the written statement, Defendant No.1 filed Vakalatnama along with the signature of Defendant No.2. Defendant No.2 had no knowledge about the pendency of the suit and she had never received any notice/summon in said suit. Thus, there was

no occasion on her part to sign the Vakalatnama dated 24th June, 2006 along with her father. After death of Defendant No.1, she received notice in the suit for substitution and came to know about the pendency of the suit. She, however, appeared in her personal capacity on 4th January, 2021 and filed her written statement along with Vakalatnama. Thereafter, the Plaintiffs filed an application to expunge the written statement filed by the Defendant No.2 stating that she had already filed her written statement along with Defendant No.1. In order to prove that Defendant No.2 had never appeared and signed the Vakalatnama along with Defendant No.1, the Defendant No.2 filed an application under Order XXVI Rule 10-A C.P.C. to send the Vakalatnama dated 24th June, 2006 allegedly signed by Defendant Nos. 1 and 2 along with her Vakalatnama dated 4th January, 2021 to the handwriting expert for comparison and report. But, said application was rejected stating that it was filed after sixteen years of filing of the suit and there is no allegation by the Defendant No.2 that Defendant No.1 had an adverse interest with him. He, however, submits that petition for expunging the written statement filed by the Defendant No.2-present Petitioner on 4th January, 2021 is still pending for consideration. It is the apprehension of Defendant No.2 that unless she proves that she had never appeared earlier and filed Vakalatnama with her father along with the written statement, her written statement filed on 4th January, 2021 may be rejected. He, therefore, prays for setting aside the impugned order under Annexure-10 and to direct learned trial Court to send both the

aforesaid Vakalatnamas to the handwriting expert for comparison and report.

4. Mr. Dash, learned counsel for the Plaintiffs-Opposite Parties objecting to the submission of Mr. Panigrahi, learned counsel for the Petitioner contends that although the Vakalatnama by Defendant Nos.1 and 2 was filed jointly but Defendant No.1 alone had filed the written statement on 24th June, 2006. Further, the written statement filed by the Defendant No.2 is a replica of the written statement filed by the Defendant No.1. Hence, no fresh written statement is required to be filed by the Defendant No.2. It is his submission that earlier assailing an order, Defendant No. 1 was directed to begin the suit in exercise of power under Order XVIII Rule 1 C.P.C. Assailing the same the Defendant No.1 had moved this Court in W.P.(C) No.1060 of 2011, which was disposed on 24th December, 2012 directing as under:

“13. On scrutiny of records and on perusal of the decisions reported (supra) the order passed by the learned trial Court does not suffer from any infirmity or illegality nor the said order can be said to be perfunctory or flawed warranting interference of this Court under Article 226 and 227 of the Constitution of India. Before parting with the case since the suit is of the year 2006 and has been pending on such a trivial and tiny issue, the learned trial court is directed to take steps for expeditious disposal of the suit. The parties are directed to cooperate with the trial court. If possible the learned trial court shall do well to dispose of within a period of one year from the date of appearance of the parties, if there is no legal impediment. The learned trial court shall act upon production of certified copy of the order. Interim Order dated 21.01.2011 passed in Misc.Case No.841 of 2011 stands vacated.

Accordingly, the writ petition is dismissed. No costs."

He, therefore, submits that this CMP does not merit consideration and the direction may be issued for early disposal of the suit.

5. Considering the submissions made by learned counsel for the parties and on perusal of the record, it appears that earlier the written statement was filed by the Defendant No.1 along with the Vakalatnama, which is purportedly signed by both Defendant Nos. 1 and 2. During pendency of the suit, Defendant No.1 died. Defendant No.2-Petitioner is none other than the daughter of Defendant No.1. After death of the Defendant No.1, she received summon in the suit and appeared and filed her written statement along with Vakalatnama. The same was objected by the Plaintiffs on the ground that the Defendant No.2 has already filed her written statement along with Defendant No.1. The petition under Order VIII Rule 1 C.P.C. to expunge the written statement filed by the Defendant No.2 on 4th January, 2021 is still pending for consideration. Only because the Defendant No.2 apprehends that her written statement filed on 4th January, 2021 may be rejected in absence of a proof that she had never signed the Vakalatnama along with her father and filed the written statement, an application under Order XVII Rule 10-A C.P.C. cannot be entertained. The Petitioner has to prove her own case by producing convincing materials to show that she had never appeared along with her father and filed her written statement earlier. Learned trial Court has also rightly held that the

Defendant No.2 does not have any adverse interest with the Defendant No.1. From the cause title of the plaint, it appears that both the Defendant Nos.1 and 2 were residing in the self-same address. Thus, it cannot be believed that Defendant No.2 had no knowledge about the pendency of the suit of last sixteen years.

6. In that view of the matter, I find no infirmity in the impugned order under Annexure-10.

7. Accordingly, this CMP being devoid of any merit stands dismissed.

8. Since earlier this Court has directed to dispose of this suit at an early date, this Court reiterates the same and directs learned trial Court to make an endeavour to dispose of the suit expeditiously giving opportunity of hearing to the parties concerned. Learned trial Court should keep in mind that no long/ unnecessary adjournment is given to the parties in the suit. It is further directed that parties to the suit shall cooperate with learned trial Court for early disposal of the same.

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

(K.R. Mohapatra)
Judge

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