

IN THE HIGH COURT OF ORISSA AT CUTTACK

CMP No. 1000 of 2022

Susama Satapathy and others

Petitioners

Mr. Mritunjay Banerjee, Advocate

-versus-

Padma Charan Satapathy and others

.... Opp. Parties

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

**ORDER
26.10.2022**

Order No.

1. This matter is taken up through hybrid mode.
2. Order dated 16th September, 2022 (Annexure-5) passed by learned Senior Civil Judge, Puri in CS No.542 of 2012 is under challenge in this CMP, whereby an application under Order XVIII Rule 1 CPC filed by the Plaintiffs/Petitioners has been rejected.
3. Mr. Banerjee, learned counsel submits that Plaintiffs are the Petitioners in this CMP. The Civil Suit has been filed for partition. Upon receiving summons, Defendants/Opposite Parties appeared and filed their written statement admitting that the suit property stands recorded in the name of Rama Chandra and Sudarsan Satapathy, sons of Basudev Satapathy. However, admitting the same, Defendants contended that Sudarsan Satapathy has been adopted to one Narasingh Devata and his wife Gouri Dibya. As such, the Plaintiffs, who are legal heirs of said Sudarsan Satapathy, are not entitled to any relief. This being the factual position, Defendants have to prove first that Sudarsan Satapathy was adopted to Narasingh Devata. Hence, they should begin the hearing of the suit. Accordingly, Petitioners filed an

application, which was rejected holding that Defendants have not admitted case of the Plaintiffs.

3.1 It is submitted by learned counsel for the Petitioners that both the parties have admitted that the suit property belong to Rama Chandra and Sudarsan Satapathy, sons of Basudev Satapathy. Plaintiffs and Defendants are different branches of said Basudev Satapathy. Since Sudarsan Satapathy is allegedly adopted to Narasingh Devata onus is on the Defendants/Opposite Parties to prove the same. As such, they should begin hearing of the suit. This material aspect was lost sight of learned trial Court while adjudicating the matter. Hence, the impugned order is not sustainable.

4. Upon hearing learned counsel for the Petitioners and on perusal of record, it appears that Defendants have filed a detailed written statement as at Annexure-2 denying the cause of action, maintainability as well as merit of the suit. Along with the same, they have stated that Sudarsan Satapathy was adopted to Narasingh Deveta. In course of hearing, Mr. Banerjee, learned counsel for the Petitioners placed reliance upon the case law in the case of ***Smt. Manjulata Bhoi Vs. Smt. Sabitri Sethi***, reported in 2016 (II) OLR 1100, wherein it is held that real test of right to begin a suit is upon him who would fail, if no evidence is led in the suit. He also relied upon order dated 4th September, 2017 passed by this Court in CMP No.799 of 2017. In the instant case, Plaintiffs/Petitioners would fail if no evidence is led in the suit. Further, perusal of the written statement (Annexure-2), it appears that Defendants have denied most of the averments made in the plaint. As such, case of the Plaintiffs does not fall within the scope of Order XVIII Rule 1 CP.C.

5. In view of the above, learned trial Court has committed no error in dismissing the petition under Order XVIII Rule 1 CPC. Accordingly, the CMP being devoid of any merit, stands dismissed.

(K.R. Mohapatra)
Judge

s.s.satapathy

