

IN THE HIGH COURT OF ORISSA AT CUTTACK

CMP NO. 1023 OF 2022

Kamalakanta Mahakud and others* *Petitioners

Mr. Amit Prasad Bose, Advocate

-versus-

***Sarpanch, Barunasingh Gram* *Opp. Party*
Panchayat, Balasore**

CORAM:

JUSTICE K.R. MOHAPATRA

ORDER

24.11.2022

Order No.

1. 1. This matter is taken up through hybrid mode.
2. 2. The Petitioners in this CMP seek to assail the judgment and order dated 16th August, 2022 (Annexure-1) passed by learned Presiding Officer, Special Court (SC & ST), Balasore in FAO NO.01/81 of 2019/022, whereby the order dated 7th September, 2019 passed by learned Civil Judge (Junior Division), Balasore in CMA No.151 of 2014 (arising out of C.S. No. 1043 of 1994-I) has been set aside.
3. 3. Mr. Bose, learned counsel submits that the Petitioners are legal heirs of Banshidhar Mahakud. C.S. No.1043 of 1994-I was filed by the Petitioners. Their predecessor, namely, Banshidhar Mahakud, was looking after the proceedings of the suit. As he could not take steps in the proceedings of the suit because of his illness, the suit was dismissed for default on 28th September, 2012. The Petitioners had no knowledge about the proceedings of the suit. Thus, no step could be taken immediately for restoration of the suit. However, coming to

know about the dismissal of the suit after the death of said Banshidhar Mahakud in the year, 2014, the Petitioners filed a petition under Order IX Rule 9 C.P.C. (CMA No.151 of 2014) for restoration of the suit. The said petition was allowed vide order dated 7th September, 2019 as at Annexure-2 subject to payment of cost. The Defendants after accepting the cost assailed the order under Annexure-2 in FAO No.01/81 of 2019/2022. Learned Appellate Court holding that there is a dispute with regard to the date of death of said Banshidhar Mahakud remitted the matter back to the learned trial Court for fresh consideration of the petition under Order IX Rule 9 C.P.C.

4. Mr. Bose, learned counsel for the Petitioners further submits that the petition under Order IX Rule 9 C.P.C. should be considered liberally, when the Petitioners are interested to pursue the suit, they should be given an opportunity for the same, which was rightly granted by learned trial Court. But learned Appellate Court being hyper technical remitted the matter back to the learned trial Court for fresh consideration, which will not only linger the proceedings of the suit, but also it will be wastage of judicial time. However, the Petitioners were not provided with opportunity of hearing before learned Appellate Court as would be evident from the impugned order Annexure-1 itself. He, therefore, prays for setting aside the impugned order.

5. Considering the submission made by learned counsel for the Petitioner and on perusal of the record, it appears that while adjudicating the matter, learned Appellate Court took note of the sale deed executed on 8th April, 2008 in which Banshidhar

Mahakud, the husband of Petitioner No.1, was shown to be dead. On the other hand, Ext. C discloses that the date of death of said Banshidhar Mahakud to be 10th April, 2014. To remove such discrepancy, learned Appellate Court remitted the matter back to learned trial Court for fresh consideration.

6. Upon hearing learned counsel for the Petitioners and on perusal of the record, this Court feels that the matter requires fresh consideration by learned trial Court. However, keeping in mind that the suit is of the year, 1994, learned trial Court should make an endeavour for early disposal of the petition under Order IX Rule 9 C.P.C. preferably within a period of four months from the date of production of certified copy of this order, giving opportunity of hearing to the parties concerned.

7. It is made clear that parties to the suit are at liberty to lead further evidence with regard to the date of death of said Banshidhar Mahakud.

8. With the aforesaid observation and direction, this CMP is disposed of.

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

(K.R. Mohapatra)
Judge

bks