

IN THE HIGH COURT OF ORISSA AT CUTTACK

CMP NO. 1061 OF 2022

Baishnab Charan Sahoo ***Petitioner***

Mr. Ajit Chandra Mohapatra, Advocate

-versus-

Laxmipriya Sahoo and others ***Opp. Parties***

CORAM:

JUSTICE K.R. MOHAPATRA

ORDER

14.11.2022

Order No.

01. 1. This matter is taken up through hybrid mode.
2. Order dated 11th October, 2022 (Annexure-1) passed by learned Senior Civil Judge, 1st Court, Cuttack in C.S. No. 827 of 2019 is under challenge in this CMP, whereby an application filed by the Petitioner to be impleaded as party to the suit has been rejected.
3. Mr. Mohapatra, learned counsel for the Petitioner submits that although the suit has been filed for a declaration that the Defendant No.1 is the adopted son of Plaintiff and a further declaration that the Plaintiff has no other son other than Defendant No.1. It is his submission that while deciding the issue involved in the suit, the Court has to incidentally go into the pleadings of the plaint in which it has been categorically stated that the Defendant No.1, who is the adopted son of Plaintiff, will succeed to the suit schedule property after his death. It is his submission that the Petitioner is the recorded owner in respect of the suit schedule property. Hence, if the right of Defendant No.1 in respect of suit schedule property is

decided in his absence, it will certainly prejudice him. This material aspect was not considered by learned trial Court while adjudicating the petition. Hence, the impugned order is not sustainable.

4. Admittedly, the suit has been filed to declare the Defendant No.1 as the son of Plaintiff and also for a declaration that the Plaintiff has no other son except Defendant No.1. Thus, the Court while deciding the issue is not required to go into the right of Defendant No.1 over the suit schedule property, as has been rightly observed by learned trial Court at paragraph-4 of the impugned order. Although the suit schedule property has been incorporated in the plaint, but it has nothing to do to decide the issue of adoption of Defendant No.1 by the Plaintiff.

5. In view of the above, I find no infirmity in the impugned order under Annexure-1. 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