

IN THE HIGH COURT OF ORISSA AT CUTTACK

CMP No. 1177 OF 2022

Sabitri Padhi @ Pani

.... Petitioner

Mr. Soumendra Pattanaik, Advocate

-versus-

Jagat Jivan Pani and others

.... Opp. Parties

CORAM:

JUSTICE K.R. MOHAPATRA

ORDER

28.11.2022

Order No.

01. 1. This matter is taken up through hybrid mode.
2. The Petitioner in this CMP seeks to assail the order dated 29th March, 2022 (Annexure-3) passed by learned Civil Judge (Junior Division), Bhubaneswar in C.S. No.2293 of 2020, whereby an application filed by the Petitioner to implead her as a party to the suit has been rejected.
3. It is submitted by Mr. Pattnaik, learned counsel that the Petitioner is the mother of the Plaintiff-Opposite Party No.1. By virtue of a conditional gift deed, the Plaintiff got the property mutated in his name. In the said house, the Petitioner along with her daughter and minor granddaughter are residing. The daughter-Defendant No.1 is taking care of her. If the Defendant No.1 is evicted, there will be nobody to look after the Petitioner and her husband. She has also filed another suit i.e. C.S. No.1917 of 2021 to revoke the conditional gift deed and for permanent injunction, which is pending before learned Civil Judge (Senior Division), Bhubaneswar. At this juncture, if the Petitioner is not impleaded as a party to the suit, she will be highly prejudiced, in the event, a decree against the Defendants is passed. Without considering the same, learned trial Court has passed the impugned order under Annexure-3 rejecting an

application under Order 1 Rule 10 C.P.C.. Hence, he prays for setting aside the impugned order under Annexure-3 and to direct learned trial Court to implead the Petitioner as a party to the suit.

4. Considering the submission made by learned counsel for the Petitioner and on perusal of the record, it appears that the suit has been filed for ejectment of the Opposite Party Nos.2 and 3, who are none other than the sisters and son of the Opposite Party No.1. The Plaintiff-Opposite Party No.1 claims the suit property by virtue of a gift deed executed by the Petitioner. The property has already been mutated in the name of the Opposite Party No.1 by virtue of a Registered Sale Deed. Since the suit is for ejectment of Opposite Party Nos.2 and 3, presence of the Petitioner is not necessary and will not facilitate proper adjudication of the suit. In that view of the matter, learned trial Court has committed no error in rejecting the application. In view of the ratio decided in the case of ***Sudhamayee Pattnaik and others –v- Bibhu Prasad Sahoo and others***, reported in 2022 SCC Online SC 1234, the Plaintiff cannot be compelled to implead someone as a party, against whom no relief is claimed, more particularly, in a suit for eviction. Non-impletion of a party is, of course, at the risk of the Plaintiff.

5. In view of the above, I find no infirmity in the impugned order under Annexure-3.

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

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

(K.R. Mohapatra)
Judge