

IN THE HIGH COURT OF ORISSA AT CUTTACK

CMP No. 1192 OF 2022

Chittaranjan Pati

....

Petitioner

Mr. S.S.K. Nayak, Advocate

-versus-

Parsuram Pati and others

....

Opp. Parties

CORAM:

JUSTICE K.R. MOHAPATRA

ORDER

07.12.2022

Order No.

01. 1. This matter is taken up through hybrid mode.
2. The Petitioner in this CMP seeks to assail the order dated 7th September, 2022 (Annexure-4) passed by learned Senior Civil Judge, Pattamundai in D.M. No.26 of 2000 (arising out of C.S. No.35 of 1988) allowing an application under Order IX Rule 9 C.P.C. restoring the suit to file.
3. Mr. Nayak, learned counsel for the Petitioner submits that the suit has been filed for partition and the same was dismissed for non-prosecution on 21st January, 2000. Although a petition for restoration of the suit under Order IX Rule 9 C.P.C. was filed, but it could not be disposed of for last twenty-two years. During pendency of the petition under Order IX Rule 9 C.P.C., Defendant Nos.1, 2, 4 and 7 have died. Although legal heirs of deceased Defendant Nos.1 and 2 were substituted by the Plaintiffs, but legal heirs of Defendant Nos.4 and 7 were not substituted and the suit was restored against dead persons. He, however, submits that in the meantime, the Plaintiffs by filing an application for substitution, has already brought on record the

legal heirs of deceased Defendant Nos.4 and 7. It is his submission that the procedure adopted by learned trial Court is unknown to law. Hence, the impugned order under Annexure-4 is not sustainable.

4. Upon hearing learned counsel for the Petitioner, this Court finds that the suit is for partition and the legal heirs of the deceased Defendants have already brought on record. As such, I am not inclined to entertain this CMP, which may further delay disposal of the suit.

5. Since the suit is of the year, 1988, learned trial Court shall make an endeavour for early disposal of the same. Parties are also directed to cooperate with learned trial Court for early disposal of the suit.

6. With the aforesaid observation, this CMP is disposed of without interfering with the impugned order under Annexure-4.

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

(K.R. Mohapatra)
Judge

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