

IN THE HIGH COURT OF ORISSA AT CUTTACK

CMP No.734 of 2021

Sk. Samimulla and others ***Petitioners***
Mr. D. Subudhi, *Advocate*

-versus-

Sk. Mahammad Yunus and others ***Opp. Parties***

CORAM:

JUSTICE A.K. MOHAPATRA

ORDER

19.01.2022

Order No.

01. 1. This matter is taken up through Video Conferencing Mode.
2. Heard learned counsel for the Petitioners.
3. The present application filed by the Petitioners against the order dated 18.11.2021 passed in C.S. No.2086 of 2015 by the learned Civil Judge (Jr. Division), Balasore thereby rejecting the petition under Order 1 Rule 10 of the C.P.C. filed by the Petitioners, who are admittedly third parties to the suit.
4. Learned counsel for the Petitioners submits that the name of the predecessors of the Petitioners illegally deleted from the RoR in respect of the suit land during settlement of operation for which they have preferred Settlement Revision No.438 of 2016 which is pending before the Revisional Authority. As such, it is submitted by learned counsel for the Petitioners that they have a subsisting interest in such schedule properties

5. On perusal of order dated 18.11.2021 passed by the learned court below, it is seen that the court below has taken into consideration all the aspects of the matter and ultimately rejected the application of the Petitioners under order 1 Rule 10.

6. Law is well settled that a third party in absence of any right has no vested right to be impleaded as party in the suit. The plaintiff is the master for a suit and he has to decide against whom he wants to litigate. Unless it is demonstrated by the affected party that he is likely to be affected by any adjudication in the suit in his absence, he is not a necessary party to the suit. In the present case, the Petitioners are strangers. Therefore, the application under Order 1 Rule 10 of the C.P.C. has been rightly rejected by the learned court below. Further it is also a well settled principle of law that the decree in the suit in which a person has not been arrayed as a party is not binding on him/her. Therefore, the apprehension of the Petitioner that in the event the suit is allowed to continue, he will be affected by the outcome of the suit is baseless in view of the fact that the decree passed in his absence will not be binding on him. It is needless to mention here that the Petitioners have other remedies to pursue for redressal of their grievances and if so advised, they may take appropriate steps by initiating an appropriate proceeding before the competent court.

7. In view of the facts and circumstances of the case narrated above, this Court is not inclined to interfere with the impugned order. Hence, the CMP stands disposed of with liberty to Petitioners to approach the competent court in accordance with law for necessary relief as sought for by them.

8. As the restrictions due to resurgence of COVID -19 situation are continuing, learned counsel for the parties may utilize a print out of the order available in the High Court's website, at par with certified copy, subject to attestation by the concerned Advocate, in the manner prescribed vide Court's Notice No.4587, dated 25th March, 2020 as modified by Court's Notice No.4798, dated 15th April, 2021 and Office Order dated 7th January, 2022.

(*A.K. Mohapatra*)
Judge

Jagabandhu

