

IN THE HIGH COURT OF ORISSA AT CUTTACK

CMP NO. 1331 OF 2022

Ajaya Kumar Mohanty

....

Petitioner

Mr. Sailesh Das, Advocate

-versus-

Santanu Mohanty and others

....

Opp. Parties

CORAM:

JUSTICE K.R. MOHAPATRA

ORDER

22.12.2022

Order No.

1. This matter is taken up through hybrid mode.
2. The Petitioner in this CMP seeks to assail the order dated 15th December, 2022 (Annexure-1) passed by learned Senior Civil Judge, 2nd Court, Cuttack in C.S. No. 680 of 2022.
3. Mr. Das, learned counsel for the Petitioner submits that the Opposite Party Nos.1 and 2 have filed C.S. No.680 of 2022 for permanent injunction against the functionaries of the State. The suit land is an embankment of a Jalayasaya pertaining to Plot No.303 under Khata No.133 to an extent of Ac.0.720 decimals. He further submits that the Petitioner has direct interest in the suit property as he is one of the recorded tenants in respect of the suit property. Unless the embankment is maintained by the Government, there will be seepage of water and the Petitioner in particular and the villagers in general will be affected. The Plaintiffs are not staying in the village. Thus, the Petitioner filed an application under Order 1 Rule 10 C.P.C. to be impleaded as a party in the suit. Learned trial Court observing that the Petitioner

is not the recorded tenant, rejected the said application. Hence, this CMP has been filed.

4. On perusal of the R.O.R. in respect of the suit property as at Annexure-3, it appears that the name of the Petitioner does not appear in the R.O.R. Although the name of one of the recorded tenants is Ajaya Kumar Mohanty, but he has been shown to be the son of Rabindranath Mohanty, whereas the Petitioner is the son of Sudam Charan Mohanty. Thus, learned trial Court has committed no error in observing that the name of the Petitioner does not appear in the R.O.R. under Annexure-3. It is, however, submitted by Mr. Das, learned counsel for the Petitioner that learned trial Court did not take into consideration the documents filed along with written note of submission to establish that the Petitioner has direct interest in the property. Since it is a suit for injunction simplicitor, the correctness of the entries made in the R.O.R. cannot be gone into at the time of adjudication of a petition under Order 1 Rule 10 C.P.C.

5. 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 1234, the Hon'ble Supreme Court has held that the Plaintiff cannot be compelled to litigate with a person against his wish. However, the Court can implead a party *suo motu* for just adjudication of the case. In the instant case, the Petitioner had filed an application under Order 1 Rule 10 C.P.C. to be impleaded as a party in the suit stating that he has direct interest in the suit property. In order to establish the same, he relied upon the R.O.R. which does not establish his case.

6. In that view of the matter, this Court is of the considered opinion that learned trial Court has committed no error in rejecting the petition under Order 1 Rule 10 C.P.C.

7. It is, however, observed that rejection of the petition under Order 1 Rule 10 C.P.C. shall not preclude the Petitioner to work out the remedy as may be available under law.

8. With the aforesaid observation, the CMP is disposed of.

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

(K.R. Mohapatra)
Judge

bks

