

IN THE HIGH COURT OF ORISSA AT CUTTACK

CMP NO. 821 OF 2021

Debendra Malik and others* *Petitioners

Mr. S.S.K. Nayak, Advocate

-versus-

Minatilata Mali and others* *Opp. Parties

Mr. Vivekananda Jena, Advocate

**CORAM:
JUSTICE K.R. MOHAPATRA**

ORDER

28.11.2022

Order No.

**CMP NO. 821 OF 2021
& I.A. No.1019 of 2022**

4. 1. This matter is taken up through hybrid mode.
2. I.A. No.1019 of 2022 is listed for orders for extension of the interim order dated 12th January, 2022 passed in I.A. No. 36 of 2022.
3. While considering the I.A., this Court feels that merit of the CMP has to be gone into. Hence, on consent of learned counsel for the parties, the CMP is taken up for final disposal.
4. Order dated 26th November, 2021 (Annexure-5) passed by learned Civil Judge (Senior Division), Soro in C.S. No.345 of 2015 is under challenge in this CMP, whereby an application filed by the Petitioners under Order 1 Rule 10 C.P.C. has been rejected.
5. The Opposite Party Nos. 1 and 2 have filed C.S. No. 345 of 2015 for declaration of right, title and interest on the basis of a registered sale deed executed by Opposite Party Nos. 5 to 7 (Defendant Nos.3 to 5). Since the Opposite Party Nos.3 and 4 (Defendant Nos.1 and 2) are creating disturbances in the peaceful

possession of Opposite Party Nos.1 and 2, they have also been impleaded as parties to the suit. The Defendant No.1-Opposite Party No.7 appeared in the suit and filed written statement contending that an agreement for sale has been executed by Defendant Nos. 3 to 5 in his favour. After closure of the evidence, the Petitioners, who are sons of Defendant No.1, filed an application to be impleaded as parties to the suit on the ground that Defendant Nos.3 to 5 have executed an agreement with them for alienation of the property for which they have filed C.S. No.908 of 2015 for specific performance of contract. If the suit is decided in their absence, there is every likelihood that their case may not be considered. Hence, they prayed for to be impleaded as parties to the suit. Learned trial Court most erroneously holding that their right over the suit property is yet to be decided dismissed the petition. Hence, this CMP has been filed.

6. Mr. Jena, learned counsel for the Plaintiffs-Opposite Party Nos.1 and 2 submits that the petition under Order 1 Rule 10 C.P.C. has been filed at the behest of Defendant No.1 only to linger the suit. Since the suit is posted for evidence of Defendants, he should come forward to lead evidence in the matter. As such, leaned trial Court has committed no error in dismissing the petition under Order 1 Rule 10 C.P.C. He relying upon the decision in the case of ***Sudhamayee Pattnaik and others –v- Bibhu Prasad Sahoo and others***, reported in 2022 SCC Online SC 1234 submits that the Plaintiff cannot be compelled to implead a party against which he does not claim any relief. However, the Court may *suo motu* direct for impletion of any party for proper adjudication of the suit. Since the petition for intervention has been rejected by learned trial

Court, occasion for impleation of the Petitioners as to parties to the suit does not arise at all. Hence, he prayed for dismissal of CMP.

7. Taking into consideration the rival contentions of the parties, this Court finds that the Petitioners have filed C.S. No.908 of 2015 against the Defendant Nos.3, 4 and 5 claiming specific performance of contract. The said suit is pending for adjudication. The Opposite Party Nos.1 and 2 filed the present suit claiming declaration of their right, title and interest over the suit property on the basis of a registered sale deed execution by Defendant Nos.3 to 5, who are the true owners of the suit land. Thus, presence of the Petitioners is not at all required for adjudication of the suit. As such, learned trial Court has committed no error in dismissing the petition filed by the Petitioners to be impleaded as parties to the suit. Hence, this Court finds no infirmity in the impugned order.

8. Accordingly, the CMP being devoid of any merit stands dismissed.

9. The interim order dated 12th January, 2022 passed in I.A. No.36 of 2022 stands vacated.

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

(K.R. Mohapatra)
Judge

bks