IN THE HIGH COURT OF ORISSA AT CUTTACK

C.M.P. No.140 of 2024

(Application under Article 227 of the Constitution of India)

Bibekananda Mahar ... Petitioner

-versus-

Dipti Ranjan Gartia and others ... Opposite Parties

Advocates appeared in the case through hybrid mode:

For Petitioner : Mr. B.P.B. Bahali, Advocate.

-versus-

For Opposite Parties

: Mr. T.K.Mishra
Advocate (For O.P.No.1)

Mr. S.K.Mishra, Sr. Advocate
(For O.P.Nos.2 (a) to 2 (g) and 3 to 13)

CORAM:
JUSTICE SASHIKANTA MISHRA

JUDGMENT
05.12.2025.

Sashikanta Mishra,J. The Petitioner is the plaintiff in C.S. No.12/2013 of the Court of learned Civil Judge (Sr.Divn.), Athmallik, who questions the correctness of order dated 03.1.2024 passed by the said Court in

allowing an application under Order 1 Rule 10 of C.P.C. to add a party not originally impleaded.

2. Briefly stated, the suit is one filed by the plaintiff for partition of the Schedule-A properties besides declaration of certain sale deeds as void and declaration of title in respect of B Schedule property along with permanent injunction and recovery of possession etc. Most of the defendants entered appearance and some of them filed their written statements. The present Opposite Party No.1, who was not a party to the suit appeared and filed an application for his impletion as a party under Order 1 Rule 10 of C.P.C. It was claimed that he is the grandson of late Malati Mahar, recorded tenant of the land in question on the strength of a registered will executed by her. Malati was the wife of late Raghumani Mahar, who was one of the co-parceners and recorded tenant of his ancestral property and as per the will, he claimed share in the suit property. Besides, Opposite Party No.1 also claimed that the compromise decree passed in an earlier suit being T.S. No.3/1989 had no

effect on the suit. Since Malati had not got her legitimate share and the compromise was effected fraudulently under pressure of defendant-Prasanna Mahar, the compromise decree is not binding on the Petitioner.

3. The plaintiff filed objection stating that Malati had earlier filed a suit being T.S. No.3/1989 against the father of the plaintiff and Defendant No.1 and predecessor-in-interest of other defendants claiming her share in the joint family property. The suit was compromised and final decree was drawn up on 26.11.1990 allotting Schedule B property of that suit in her favour. As such, the property no longer remained ancestral or joint. The intervenor is bound by the compromise and he has already mutated the property received under the compromise. The intervenor therefore, has no right over the suit property.

4. After hearing both sides and on consideration of the rival contentions, the trial Court observed that the

plaintiff does not deny that the intervenor is a successor of late Malati Mahar. After perusing the pleadings and final decree of the previous suit, the trial Court further found that out of the three schedules of properties involved in the said suit, only 'B' Schedule property was allotted to Malati and there was no mention as regards the rest of the property, which not being partitioned was the subject matter of the present suit. The trial Court was thus of the view that whether the intervenor has entitlement or not can only be decided through trial, but not allowing him to contest will deprive him from right of hearing. His presence was also held to be helpful in effective adjudication of the suit. The application was thus allowed by order dated 3.10.2024, which is impugned.

5. Heard Mr. B.P.B. Bahali, learned counsel for the plaintiff-appellant, Mr. T.K.Mishra, learned counsel for the Opp.Party No.1 and Mr. S.K.Mishra, learned Senior counsel with Miss P.S. Mohanty for the other Opp.Party-defendants.

6. Mr. Bahali would argue that the compromise decree passed in T.S. No.3/1989 has already been acted upon. On the other hand, the so-called Will relied upon by the Opp.Party No.1 was not probated. Nevertheless, he applied for mutation and ROR was published in his favour. As such, Malati's property is separated from the suit property over which she has no right, title and interest. Under such circumstances, Opposite Party No.1 cannot be treated as a necessary party to the suit. The finding of the trial Court is entirely erroneous as impleading Opposite Party No.1 would reopen the partition already effected by metes and bounds as per the compromise decree. Mr. Bahali cites the following judgments in support of his contentions:

> (*i) Sudhamayee Pattnaik and others Vs. Bibhu Prasad Sahoo and others; AIR 2022 SC 4304.*
>
> *(ii) Manjunath Tirakappa Malagi and others Vs. Gurusiddappa Tirkappa Malagi (Dead through L.Rs.); 2025 INSC 517.*

7. Per contra, Mr. T.K.Mishra would submit that as per the settled position of law, any person having a

direct interest in the property is a necessary party. Even a person legally interested can be impleaded. The Court is empowered to add any person as a party at any stage if it considers the presence of the said party necessary to enable it to effectively and completely adjudicate upon all questions involved. In the instant case, it has not been disputed that the Opposite party is a legatee under the Will and therefore, has every right to participate in the suit. The property belonging to Opposite Party No.1 has been involved in the partition suit and therefore, he is a necessary party.

8. Mr. S.K.Mishra, learned Senior counsel submits that although the O.P nos. 2 (a) to 2 (g) and to 13 have no objection either way, he supports the impletion in the interest of expeditious disposal of the suit.

9. As it appears from the contentions advanced, there was an earlier suit being T.S. No.3/1989 wherein some properties were partitioned among the co-sharers. One Malati Mahar is the recorded tenant of

Hal Khata Nos.5, 25 and 196 of Mouza Khandahata, Pacheribandh, Kaintaragarh respectively. She is said to have executed a Will in favour of the Opposite Party No.1 bequeathing all her properties in his favour. According to Opposite Party No.1, the present suit for partition involves the property under the aforementioned khatas, but the successors of Malati Mahar have not been made parties to the suit. The trial Court, on perusal of the plaint, written statement and the final decree passed in the previous suit found that among the three schedules involved only Schedule B property was allotted to Malati Mahar but nothing was said about the remaining properties. The trial Court further found that the remaining properties not subjected to partition in the earlier suit form the subject matter of the present suit. Whether the claim of the opposite party No.1 over such properties is valid or not is a question that can only be determined in trial as rightly held by the trial Court. But to prevent Opposite Party No.1 at the threshold would tantamount to preventing him from proving his claim.

The trial Court has categorically held that the presence of Opposite Party No.1 would be helpful to it in effective adjudication of the suit. It has not been demonstrated as to how such view taken by the Court is wrong. In the case of ***Sudhamayee Pattnaik (supra),*** the Supreme Court interpreting the object of Order 1 Rule 10 held that the plaintiff being *dominus litis* cannot be forced to implead a person against whom he does not seek any relief. Said judgment was passed in respect of an application filed seeking impleadment of a subsequent purchaser as party/ defendant. The present case obviously stands on a different footing as it is a case of partition, wherein the strict segregation of co-sharers as plaintiff and defendants may not be very relevant. It is also well settled that if the Court is of the view that the presence of a party in the suit would be helpful for effective adjudication of the suit, there is no reason why such a person should not be impleaded as a party. After all, it should always be the object of the Court to bring finality of litigation between the same parties.

10. Thus, from a conspectus of the facts and the contentions raised, this Court does not feel persuaded to interfere with the impugned order. Resultantly, the CMP is dismissed. However, considering the fact that the suit is of the year 2013, the trial Court is directed to expedite the proceedings and dispose of the suit preferably within a period of six months from today.

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Sashikanta Mishra,
Judge

Ashok Kumar Behera

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Location: High Court of Orissa, Cuttack
Date: 05-Dec-2025 17:14:00