IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.16521 OF 2016

(An application under Articles 226 and 227 of the Constitution of India)

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1. Abdul Ahad @ Abdul Ahad Khan
2. Abdul Sahim @ Abdul Sahim Khan
3. Soni Khan ..... Petitioners

-Versus-

1. Sayed Jamal Sahed (since dead) through, his legal heirs and others,

..... Opp. Parties

Advocates appeared:

For Petitioners : Mr. Sambit Kumar Patri, Advocate
On behalf of Mr. Debasis Tripathy, Advocate

For Opp. Parties : Mr. K.M.H. Niamati, Advocate,
(For Opposite Party No.4)

Mr. S.N Pradhan, Advocate
(for Opposite Party Nos.2(a) to 2(d)

CORAM :
MR. JUSTICE K.R. MOHAPATRA
MR. JUSTICE SANJAY KUMAR MISHRA

Heard and disposed of on 09.04.2026

JUDGMENT

By the Bench;

1. This matter is taken up through hybrid mode.

2. Petitioners in this writ petition pray for a direction to set aside the order dated 09.08.2016 (Annexure-4 series) passed by learned Presiding Officer, Wakf Tribunal, Orissa, Cuttack in W.T(O)/O.A. No.09 of 2016, by which the legal

heirs of deceased Defendant Nos.1, 7, 8 & 9 were impleaded as parties to the said O.A.

3. Mr. Sambit Kumar Patri, learned Counsel being authorised by Mr. Tripathy, learned Counsel for the Petitioners submits that the impugned order is *per se* illegal. The Plaintiff-Opposite Party No.1 filed W.T(O)/O.A. No.09 of 2016 impleading Defendant Nos.1, 7, 8 & 9 as parties. But the summons issued to them returned unserved indicating that they are dead. In fact, the Defendant Nos.1, 7, 8 & 9 died prior to filing of the O.A. Thus, the O.A. itself was not maintainable as it was filed against dead persons.

3.1. The Plaintiff-Opposite Party No.1, in order to regularise the O.A., filed an application under Order-22, Rule-4 of C.P.C. to substitute the legal representatives of deceased Defendant Nos.1, 7, 8 & 9. Learned Presiding Officer, Wakf Tribunal, most illegally exercised his power under Order-1, Rule-10 of C.P.C. and impleaded the legal heirs of deceased Defendant Nos.1, 7, 8 & 9 as parties to the said O.A. It is his submission that by impleading them as parties, the present Petitioners, who are Defendant Nos.2, 3 & 4 before the Wakf Tribunal are highly prejudiced, as they have to face litigation, which was not maintainable from its inception. He, therefore, prays for setting aside the impugned order and to dismiss the O.A.

4. Mr. Niamati, learned Counsel appearing for the Orissa Board of Wakf, Cuttack (Opposite Party No.4) vehemently objects to the same. It is his submission that the Court has

ample power under Order-1, Rule-10(2) of C.P.C., either to implead or to strike off any party for just adjudication of the case. For effective and complete adjudication of the *lis* the Wakf Tribunal rightly exercised power under Order-1, Rule-10(2) of C.P.C. by impleading the legal representatives of deceased Defendant Nos.1, 7, 8 & 9 to the O.A.

4.1. It is his submission that learned Tribunal while disposing of the application has categorically observed that by addition of parties, the nature and character of the suit would not change. Their presence in the suit would avoid further litigation in respect of the suit land. Learned Wakf Tribunal further observed that addition of the legal heirs of the deceased Defendant Nos. 1, 7, 8 and 9 as parties to the suit would enable the Court to effectually and completely adjudicate the dispute between the parties. He, therefore, submits that there is no illegality in the impugned order dated 09.08.2016 and prays for dismissal of the writ petition.

5. Taking note of the submissions made by learned Counsel for the parties and on perusal of the record, it appears that the Plaintiff initially filed requisites for issuance of summons to Defendants Nos.1, 7, 8 & 9. But the said notices returned unserved with a noting that they are dead. It is submitted by Mr. Patri, learned Counsel that the said Defendants were dead much prior to filing of the suit (O.A.). However, a petition was filed by the Plaintiff under Order-22, Rule-4 read with Order-1, Rule-10 of C.P.C. with a prayer to

implead the legal representatives of the deceased Defendant Nos.1, 7, 8 & 9 as parties to the suit.

6. Although, an application under Order-22, Rule-4 of C.P.C. would not be maintainable, as it is submitted by Mr. Patri, learned Counsel that the Defendant Nos.1, 7, 8 & 9 were dead prior to filing of the suit (O.A.), but a petition under Order-1, Rule-10 C.P.C. would be maintainable to implead legal heirs of the said Defendants as parties to the suit for its effective and complete adjudication. There is no bar under law to implead the legal representatives of deceased Defendants as parties to the suit although the said defendants died prior to filing of the suit. Learned Wakf Tribunal while adjudicating the matter has taken ample care in that regard and passed an order impleading the legal representatives of deceased Defendant Nos.1, 7, 8 & 9 as parties to the suit (O.A.) for effective and complete adjudication of the suit.

7. In view of the above, we find no infirmity in the impugned order dated 09.08.2016 (Annexure-4 series) passed by the learned Presiding Officer, Wakf Tribunal, Orissa, Cuttack in W.T(O)/O.A. No.09 of 2016.

8. Accordingly, the writ petition being devoid of any merit stands dismissed. In the facts and circumstances of the case there shall be no order as to costs.

9. It appears from the order sheet of the writ petition that the interim order is not operating in the present writ petition since 06.03.2017.

10. In view of the above, it is directed that learned Presiding Officer, Wakf Tribunal, Orissa, Cuttack shall take steps for early disposal of W.T(O)/O.A. No.09 of 2016 keeping in mind that the O.A. is pending since 2016, if the same is still pending.

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

(K.R. Mohapatra)
Judge

(S.K. Mishra)
Judge

Orissa High Court, Cuttack,
Dated 9th April, 2026/Prasant

Signature Not Verified
Digitally Signed
Signed by: PRASANT KUMAR PRADHAN
Designation: Secretary
Reason: Authentication
Location: High Court of Orissa, Cuttack.
Date: 10-Apr-2026 13:31:22