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IN THE HIGH COURT OF ORISSA AT CUTTACK

CMP No. 437 of 2023

CNR No. - ODHC010286852023

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

Bidyadhar Pradhan

…. Petitioner
(Plaintiff)

-versus-

1.State of Odisha
2.Tahasildar, Dhamnagar
3.Nirakar Dhal
4.Madhusmita Mohanty
5.Braja Kishore Mallick
6.Suryakanta Sahoo
7.Prashant Kumar Mishra ***…. Opposite Parties***
(Defendants)

Advocates appeared in this case through Hybrid Mode :

For Petitioner : Mr. Jyoti Patnaik, Advocate,
Ms.Padmini Behera, Advocate,
and Ms. Ipsita Behera, Advocate

For Opposite Parties : Mr. S. J. Mohanty, A.S.C.
(for O.P. Nos. 1 and 2)
Ms. Sabita behera along with
Mr. S.S.K. Nayak, Advocate
(for O.P. Nos. 3 to 7)

CORAM:

HON'BLE MISS JUSTICE SAVITRI RTHO

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Date of Hearing: 18.08.2026, 31.08.2026 and 08.09.2026

Date of Judgment: 31.10.2026

……..

Savitri Ratho, J. This CMP has been filed by the plaintiff challenging the order dated 10.02.2023 passed by the learned Civil Judge(Junior Division), Dhamnagar in C.S. No. 20 of 2020 (Annexure-5) allowing the petition moved by the Opposite Parties No. 3 to 7 under Order 1 Rule 10 of the CPC.

BRIEF FACTS

2. The petitioner as plaintiff filed Civil Suit No. 20 of 2020 for a decree of declaration of his title, confirmation of his possession in respect of the suit land and for permanent injunction against the Defendants No. 1 and 2 (present Opposite Parties No.1 and 2).

3. The case of the plaintiff was that Bhagirathi Pradhan, his father and he were in possession over the suit land on the strength of Chirasthyai Rayati Patta granted on 05.07.1945 in favour of his father by the ex-intermediary. Continuous possession over the suit land remained with the father of the plaintiff and thereafter with the plaintiff till date, uninterruptedly. Since 75 years, they were possessing the land. In pursuance of order passed on 09.10.2019 by the Defendnat/Opposite

Party No.2 in L.E case No.1614/19-20, the local R.I on 28.02.2020 and 29.02.2020 asked the plaintiff to vacate the suit land and remove the structure existing over a small portion of the suit land which was his dwelling house and threatened to forcibly evict him and demolish it. Hence, he filed the suit.

4. Application under Order 39, Rule 1 and 2 read with Section 151 of the CPC filed by the plaintiff-petitioner was disposed ex-parte against Opposite Party No.1 and 2 on 31.03.2021, directing both sides to maintain status quo over the suit land.

5. Thereafter application under Order 1, Rule 10 of the CPC was filed by Opposite Party Nos. 3 praying for their impletion in the suit as defendants. They stated that Hal Plot No. 2061, measuring Ac. 0.62 decimals, under M.S. Khata No. 1252 of Mouza Jayanagar, is recorded as Patita land under the Government Sarbasadharana Khata, with the village road situated towards its western side and their respective Sthitiban lands situated towards the eastern side. They had purchased different portions of the adjoining Plot No. 2061,3820 and 3918, measuring Ac. 0.80 decimals, through registered sale deeds and were in possession thereof, having undertaken mutation and conversion of the land to Gharabari and constructed their residential houses. The disputed

Plot No. 2061 provides their only access to the village road. The land being government land and communal in nature was being used by both Hindus and Muslims for access to their agricultural land situated near it and to access the public road and the village road. Neither the plaintiff or his father was ever in possession of the suit land. The petitioner had illegally occupied Ac.0.01 decimals and 200 square links of the suit plot for which Encroachment Case No. 1614/2019-2020 was initiated against him by the Tahasildar, Dhamnagar and he has paid a penalty of Rs. 800/- on 02.08.2019 vide Receipt Sl. No. 4898-791. The Applicants contended that the disputed property is Government land and that any decision in the suit in their absence would prejudice their right of access and the interests of the general public and their impleadment was necessary for effective adjudication, prevention of multiplicity of proceedings and avoidance of irreparable loss, and that no prejudice would be caused to the Plaintiff, as the trial has not yet commenced. They also stated that the rayatti patta was a fabricated one.

6. An objection was filed by the plaintiff-Petitioner stating that the application filed under Order 1 Rule 10 of the CPC was not maintainable and was based on false, concocted and misleading averments. The Applicants did not have any right of access through the

disputed Plot No. 2061, measuring Ac.0.62 decimals, appertaining to Mouza Jayanagar, M.S. Khata No. 1252, recorded as Abada Jogya Anabadi Government land. The Applicants' claims of purchasing adjoining plots, possessing valid mutation records and having no alternative access road were false, and the khatians relied upon by them were fabricated and had no legal validity. Hal Plot No.2061/3820, measuring Ac.0.40 decimals, continued to be recorded under Government Khata No.1252, and the Revenue Inspector's report also supports its inclusion in the said Government khata. The Applicants were attempting to grab Government land on the basis of invalid revenue records and they were neither necessary nor proper parties to the suit for which their application was liable to be dismissed.

IMPUGNED ORDER

7. The learned Civil Judge (Junior Division), Dhamnagar found that the suit had been filed with an application under Order 1 Rule 8 CPC with a prayer to make paper publication regarding the suit. It found that the suit land appertained to M.S ROR khata no.1252, Abada yogya Anabadi, Hal plot no.2061 of area A0.62 dec and in the said Khatian, in the remark column, there was no note of possession with regards to possession of plaintiff. Perusal of the ROR khatian

documents of the all the Petitioners, revealed that the third party petitioners have got their house adjacent to the suit land they claimed that they were using the suit land and it is a communal land used by the public. Holding that the given circumstances, the third party petitioners are found to be the necessary parties and their impleadment, will help in proper adjudication of the issues and will avoid multiplicity of proceedings and if they are impleaded in the suit, then it will enable the Court to adjudicate the issues effectively and completely, keeping in view the interest of justice and proper adjudication of the suit, allowed the application and added the applicants as Defendants No. 3 to 7.

SUBMISSIONS

PETITIONER

8. Mr. Jyoti Patnaik, learned counsel for the Petitioner submitted that the suit Plot No. 1497 in Sabik Khata No. 577 of mouza Jayanagar, PS-Dhamnagar, Dist- Balasore now Bhadrak was Anabadi and the aforesaid land was lying fallow and in order to develop the land for cultivation purpose the ex-intermediary had granted permanent rayati patta (chirasthayi rayati patta) in favour of Bhagirati Pradhan, the deceased father of plaintiff on 05.07.1945 in respect of area A0.62dec

out of total area in Sabik plot No. 1497 accepting salami therefore. Consequent on availing "chirastayi rayati patta", father of plaintiff reclaimed the land under cultivating possession and enjoyed the land. The ancestor of the Petitioner acquired occupancy right over the suit land and paid the rent to the ex-intermediary continuously for more than a decade. If the Defendants No. 3 to 7 are added as parties, then the Petitioner will suffer a great loss and will be debarred to get proper justice. The applicants were neither proper or necessary parties in the suit and effective decree could be passed in their absence. He relied on the decision of the Supreme Court in the case of ***Sudhamayee Pattnaik & others vs. Bibhu Prasad Sahoo & others : 2022 SCC Online SC 1234*** in support of his submissions.

9. Ms. P. Behera and Ms. I. Behera, learned counsel appearing on behalf of Mr. Jyoti Patnaik, learned counsel for the Petitioner had submitted that the plaintiff is the *dominus litis* and no party can be impleaded as a defendant against the wishes of the plaintiff. They reiterated that the applicants are neither proper or necessary parties in the suit and hence the impugned order directing for their impletion is liable to be set aside.

OPPOSITE PARTIES NO. 3 TO 7

10. Mr. S.S.K. Nayak, learned counsel for the Defendants 3 to 7 submitted that the suit land is government land and is used by the public of Dhamnagar NAC and the near-by cultivators of both communities. The Stitiban Gharabari lands of the Defendants 3 to 7 are situated behind the suit land and they have got their respective dwelling houses over their plots. In the front of the suit land, the village Road is situated. The Defendants 3 to 7 with their family members use the said suit land as their only path way to their plot Nos.2061/3820/3918 respectively. The suit land does not belong to the Petitioner. Neither the father of the petitioner nor the petitioner were possessing the suit land peacefully but the petitioner was in illegal possession over a portion of the suit land for which Encroachment case no.1614/2019-20 has been initiated against him and he has paid the penalty before the Tahasildar/Defendant No.2. Eviction notice has also been issued by the Defendant No.2 against the petitioner in respect of the said encroached portion of the suit land. He has relied on the decision of this Court in the case of ***Banchhanidhi Patra & others vs. Bhagabat Prasad Panda & others*** in CMP No. 1278 of 2016 in support of his submission that the impugned order does not call for any interference.

STATE COUNSEL

11. Mr. S.J. Mohanty, learned Additional Standing counsel submitted that the impugned order being a reasoned order, did not call for interference in exercise of power under Article 227 of the Constitution.

STATUTORY PROVISIONS

12. The provision of Order 1 Rule 10 (2) of the C.P.C. is extracted below for easy reference:-

> ***"10. Suit in name of wrong plaintiff***
>
> ***(1) xxxx***
>
> ***(2)Court may strike out or add parties:-***
>
> *"The Court may at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the Court to be just, order that the name of any party improperly joined, whether as plaintiff or defendant, be struck out, and that the name, of any person who ought to have been joined, whether as plaintiff or defendant, or whose presence before the Court may be necessary in order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the suit, be added."*

JUDICIAL PRONOUNCEMENTS

13. In the case of ***Sudhamayee Pattnaik*** (supra), the Supreme Court has held as follows;

> *"9. At the outset, it is required to be noted that the defendants in the suit filed application under Order 1 Rule 10 CPC and prayed to implead the subsequent purchasers as party defendants. The suit is for declaration, permanent injunction and recovery of possession. As per the settled position of law, the plaintiffs are the dominus litis. Unless the court suo motu directs to join any other person not party to the suit for effective decree and/or for proper adjudication as per Order 1 Rule 10 CPC, nobody can be permitted to be impleaded as the defendants against the wish of the plaintiffs. Not impleading any other person as the defendants against the wish of the plaintiffs shall be at the risk of the plaintiffs. Therefore, subsequent purchasers could not have been impleaded as party defendants in the application submitted by the original defendants, that too against the wish of the plaintiffs."*
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> *"11. However, at the same time, considering the fact that defendants have also filed counterclaim for declaration of their right, title and interest over the suit property and permanent injunction and in case the counterclaim is allowed, as the plaintiffs are opposing to implead the subsequent purchasers as party defendants, thereafter it will not be open for the plaintiffs to contend that no decree in the*

counterclaim be passed in absence of the subsequent purchasers. Therefore, non-impleading the subsequent purchasers as defendants on the objection raised by the plaintiffs shall be at the risk of the plaintiffs.

12. In view of the above and for the reasons stated above and with the aforesaid observations, the present appeal is allowed. The impugned judgment and order passed by the High Court and that of the trial court allowing application under Order 1 Rule 10 CPC are hereby quashed and set aside, however, with the observations as above.

13. The instant appeal is allowed in the aforesaid terms. In the facts and circumstances of the case, there shall be no order as to costs."

14. In the case of ***Banchhanidhi Patra*** (supra), this Court has held as follows;

"7. An identical question came up for consideration before this Court in ***Indrajit Dandasena and others v. Mangal Charan Dandasena and others****,* ***57 (1984) CLT 31****. Learned Single Judge, before whom the revision came up for hearing, has observed that there are cleavage of decisions of this Court on the point. The matter was referred to a larger Bench. This Court went in-depth into the matter and held that the maxim "dominus litis" means the plaintiff is the master of suit. It was further that the rule of dominus litis is subject to the powers of the Court under Order 1, Rule 10(2) of the Code inasmuch as the said rule authorises the Court to*

direct addition of further parties to the suit even suo motu where it appears that such impletion is just and the party who has not been joined in the litigation by the plaintiff is either a necessary or a proper party. The exercise of discretion by the Court in cases where it satisfies the requirements of the rule would be made nugatory if the controlling authority would be the plaintiff by application of the rule of dominus litis. As a matter of fact, while considering as to whether impletion of a party is necessary to pass an effective and executable decree, or to enable the Court effectually and completely to adjudicate upon and settle all questions involved in the suit the Court is required to go into the question as to whether the discretion is to be exercised by it in the facts and circumstances of the case.

8. The plaintiffs have alleged in the plaint that the suit land has been wrongly recorded in the name of the defendant in Raghupati Settlement. The intervenors assert that the disputed land is a public road. Admittedly, the suit schedule land has been recorded as village road in the ROR. Every public has a vital interest over the properties of the Government. In the event the suit is decreed, the same would affect the rights of the public. Their presence would enable the court to effectually and completely adjudicate the lis. Thus the intervenors are proper parties to the suit."

(emphasis supplied)

ANALYSIS AND CONCLUSION

15. In view of the provision of Order 10(2) of the CPC and the decision referred to above, the following principles emerge:-

(i) The plaintiff being *dominus litis* has the liberty to choose against whom he/she claim relief and non-joinder of a party would be at the risk of the plaintiff and no party can compel the plaintiff to implead any party in the suit.

(ii) The Court has the suo motu power or while considering an application for impletion of parties, to direct for impletion, if it considers that it is necessary in the facts and circumstances of the case, for passing an effective and executable decree or to enable it to adjudicate upon all the issues/questions involved in the suit.

16. Upon hearing learned counsel for the parties and perusal of the provisions of Order 10, Rule 2 of the CPC and the decisions referred to above, I find that the impugned order passed by the learned trial Court is a reasoned order, which is neither perverse nor bereft of jurisdiction.

17. I therefore do not consider it to be a fit case to exercise power under Article 227 of the Constitution to interfere with the impugned order.

18. The CMP is therefore dismissed.

19. Interim order dated 21.06.2023 passed in I.A. No. 413 of 2023 stands vacated and I.A. No. 413 of 2023 stands disposed of.

20. Before parting with the case, I would like to place on record, a note of appreciation for Ms. Padmini Behera and Miss Ipsita Behera, learned counsel who are relatively new entrants to the Bar but who had come prepared with the case on 08.09.2026 and ably supplemented the submissions made earlier by Mr. Jyoti Pattanaik, learned counsel on the petitioner. This sort of assistance is expected from young members of the Bar, but is rarely extended.

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

22. Copy of this order be communicated to the learned Civil Judge (Junior Division), Dhamnagar.

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(Savitri Ratho)
Judge

Orissa High Court, Cuttack
Dated the 31st October 2026 /Subhalaxmi

Signature Not Verified
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Signed by: SUBHALAXMI PRIYADARSHANI SAHOO
Reason: Authentication
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