

**(2024) 04 OHC CK 0209**  
**In the Orissa High Court**  
**Case No : CMP No. 282 Of 2024**

Annapurna Mahasuar

APPELLANT

Vs

Satyabhama Praharaj And Others

RESPONDENT

**Date of Decision :** 23-04-2024

**Acts Referred:**

**Citation :** (2024) 04 OHC CK 0209

**Hon'ble Judges :** K.R. Mohapatra, J

**Bench :** Single Bench

**Advocate :** Kousik Ananda Guru

**Final Decision :** Disposed Of

## Judgement

K.R. Mohapatra, J

1. This matter is taken up through hybrid mode.
2. Order dated 5th March, 2024 (Annexure-6) passed by learned Civil Judge (Senior Division) (LR & LTV), Bhubaneswar in C.S. No.68 of 2012 is under challenge in this CMP, whereby an application filed by the Petitioner to be impleaded as a party to the suit, has been rejected.
3. Mr. Guru, learned counsel for the Petitioner submits that the Opposite Party No.1 as Plaintiff has filed the aforesaid suit for injunction simplicitor. The property involved in the said suit is also the subjection matter of C.S. No.2121 of 2018 filed by the present Petitioner for partition and other consequential relief. The Opposite Party No.1 is a stranger to the family of the Petitioner. Being emboldened by a Registered Sale Deed fraudulently obtained by the General Power of Attorney (GPA) holder of the brothers of the Petitioner, the Opposite Party No.2 has started construction over the suit land. Since the suit property is also the subject matter of dispute in C.S. No.2121 of 2018 filed for partition, the Petitioner has an interest in the suit property. As such, she is a necessary party to the suit. It is, more so, because the present suit is a collusive one to grab the

joint family property of the Petitioner. Unless the Petitioner is made a party to the suit, she will be highly prejudiced and will suffer irreparable loss. Learned trial Court while adjudicating the petition being swayed away with the fact that the Petitioner does not have any right over the suit property, dismissed the application. Hence, this CMP has been filed.

4. Taking note of the submission made by learned counsel for the Petitioner and on perusal of the record, it appears that the suit is filed for injunction simplicitor. Law is well settled in the case of Sudhamayee Pattnaik and others –v- Bibhu Prasad Sahoo and others, reported in 2022 SCC Online SC 1234 that the Plaintiff being the dominus litis cannot be compelled to litigate with a person against whom he does not claim any relief. Of course, the Court may suo motu exercise the power to implead any party to the suit for its just adjudication. Non-impletion of a party is at the risk of the Plaintiff. Since the Petitioner is not a party to the suit, the decree, if any, passed in the suit will not be binding on her. It is further submitted that C.S. No.2121 of 2018 is pending in the same Court for partition. Be that as it may, when the present suit has been filed for injunction simplicitor against the Defendants named therein, the Petitioner is neither a necessary nor a proper party to the suit.

5. Accordingly, this Court is not inclined to interfere with the impugned order under Annexure-6. It is, however, observed that since the suit is of the year, 2012, learned trial Court should make its best endeavour to see that it is disposed of at an early date, if there is no legal impediment. Parties are also directed to cooperate with learned trial Court for early disposal of the suit.

6. The CMP is accordingly disposed of.

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

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