

(2024) 01 OHC CK 0107
In the Orissa High Court
Case No : CMP No.1366 Of 2023

Arati Behera And Others Vs State Of Odisha ?

Date of Decision : 11-01-2024

Acts Referred:

Code of Civil Procedure, 1908 — Order 1 Rule 10

Citation : (2024) 01 OHC CK 0107

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

Bench : Single Bench

Advocate : Jitendra Kumar Mishra (2)

Final Decision : Dismissed

Judgement

K.R. Mohapatra, J

1. This matter is taken up through hybrid mode.
2. Order dated 19th October, 2023 (Annexure-3) passed by learned 1st Additional Senior Civil Judge, Balasore in IA No.547 of 2019 (arising out of Execution Case No.17 of 2018) is under challenge in this CMP, whereby an application filed by the petitioners under Order I Rule 10 CPC, has been rejected.
3. Mr. Mishra, learned counsel for the Petitioners submits that TS No.142 of 1996 was filed for partition of schedule 'kha' and 'cha' schedule property, declaration of right, title and interest over schedule 'Ga', 'Gha', and 'Una' property as well as for other consequential reliefs. The suit was decreed ex-parte on 19th March, 2010 against the Defendants. After disposal of the suit, the Plaintiffs-DHrs filed Execution Case No.17 of 2018 which is pending for adjudication.
4. It is submitted that during pendency of the suit, said Manorama Mallick died on 1st March, 2006. But the Plaintiffs, without impleading the LR's, proceeded with the suit and it was decreed ex-parte. The Petitioners are the LR's of Defendant No.15. When they came to know that the ex-parte decree has been passed and it is put to execution, they filed an application to be impleaded as party in a review petition filed by some of the Defendants. The said application

has been rejected vide order under Annexure-3.

5. It is submitted by Mr. Mishra, learned counsel for the Petitioners that since the Petitioners have subsisting interest in the suit and they have a right to sue to be sued, they should have been impleaded as parties to the suit after death of Defendant No.15. For reasons the best known, the Plaintiffs did not substitute the LRs of Defendant No.15 and proceeded with the suit. The Petitioners are necessary parties to the suit as well as to the execution proceeding and any other proceeding ancillary to the same. But learned trial Court without considering the same, rejected the petition on the ground that the Defendant No.15 was set ex-parte. Thus, she was not required to be substituted. Further, the Plaintiffs were exempted from subsisting Defendant No.15. Accordingly, learned trial Court opining that the matter need not be decided again, rejected the petition. He, therefore, prays for setting aside the impugned order under Annexure-3 and to direct learned Executing Court to implead present Petitioners as parties to the Execution case.

6. Considering the submission made by learned counsel for the Petitioners and on perusal of the record, it appears that Defendant No.15 was set ex-parte on 31st March, 1998 and she expired on 1st March, 2006. The Plaintiffs were also exempted from taking steps for substitution of Defendant No.15 vide order dated 18th December, 2019. In view of the above, the question of impleadment of Petitioners as parties to the suit or execution case does not arise at all, more particularly, when the aforesaid orders were never challenged or varied by any competent Court of law.

7. In view of the above, this Court is of the considered opinion that learned trial Court has committed no error in rejecting the petition under Order I Rule 10 CPC filed by the Petitioners which is completely misconceived. The Petitioners have other remedy available in the Code of Civil Procedure to protect their interest, if any in the property.

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

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

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