
(2023) 11 OHC CK 0117
In the Orissa High Court
Case No : CMP No. 1270 Of 2023

Bhaskar Pallai (Since Dead) Through Lrs. Satyabhama Pallai
And Others

APPELLANT

Vs

Sumitra Pallai And Another

RESPONDENT

Date of Decision : 30-11-2023

Acts Referred:

Citation : (2023) 11 OHC CK 0117

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

Bench : Single Bench

Advocate : Prasanta Kumar Nanda

Final Decision : Dismissed

Judgement

K.R. Mohapatra, J

1. This matter is taken up through hybrid mode.
2. Order dated 5th August, 2023 (Annexure-4) passed by learned Civil Judge (Junior Division), Chatrapur in C.S. No.1 of 2018 is under challenge in this CMP, whereby the written statement filed by the Petitioners, has been accepted.
3. Mr. Nanda, learned counsel submits that the Petitioner (since dead) as Plaintiff has filed the suit to declare his right, title and interest over the suit property by way of adverse possession along with permanent injunction. He also prayed for a declaration that the order passed in Mutation Case No.2151 of 2000 is null and void and for other consequential reliefs. On receipt of summons, the Defendants appeared. But, they did not file any written statement within the stipulated period. As such, they were precluded from filing the written statement vide order dated 9th May, 2018. Thereafter, the Plaintiff amended the plaint and filed consolidated plaint on 9th November, 2021. But the Defendants taking advantage of the same filed the written statement along with a petition for acceptance of the same. They have never prayed for recalling the order dated 9th May, 2018. Hence, their written statement could not have been accepted. An additional

written statement cannot be accepted unless the Defendants had filed their written statement in due time. He further submits that the written statement has not been signed by any of the Defendants. These material aspects were lost sight of by learned trial Court while accepting the written statement of the Defendants. Hence, the impugned order under Annexure-4 is not sustainable.

4. Upon hearing learned counsel for the Petitioners and on perusal of the record, it appears that the Defendant No.1 was precluded to file the written statement on 9th May, 2018 and the prayer of the Defendant No.2 to file written statement was rejected on 29th October, 2018. But, subsequent to that, the Plaintiff sought for amendment of the plaint and the consolidated plaint was accepted on 9th November, 2021. Thereafter an application for acceptance of the written statement was filed. Since the Plaintiff had filed consolidated plaint, the Defendants have a right to file additional written statement to the same.

5. In the instant case, no written statement was filed and the Defendants were precluded from filing their written statement. But, a fresh right accrued to the Defendants after the consolidated plaint was accepted. It appears that Mr. Nanda, learned counsel for the Plaintiffs-Petitioners seeks to assail the impugned order on technicality.

6. This Court is not inclined to accept the same in as much as the Defendants want to contest the suit by filing their written statement and that they have a right to file the written statement to the consolidated plaint. The Court should always make an endeavour to see that the suit is disposed of on contest rather on technicality. Since learned trial Court has accepted the written statement to make an endeavour to dispose of the suit on contest, this Court is not inclined to interfere with the impugned order under Annexure-4. It is, however, observed that if the Defendants have not signed the written statement, the consequence will follow.

7. Accordingly, the CMP being devoid of any merit stands dismissed.

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

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