
(2022) 04 OHC CK 0077
In the Orissa High Court
Case No : C.M.P. No.283 Of 2022

Dharani Ballav Dey

APPELLANT

Vs

Sougat Ballav Dey

RESPONDENT

Date of Decision : 11-04-2022

Acts Referred:

Code of Civil Procedure, 1908 — Order 1 Rule 10

Citation : (2022) 04 OHC CK 0077

Hon'ble Judges : Biswanath Rath, J

Bench : Single Bench

Advocate : S. Mishra

Judgement

Biswanath Rath, J

1. This petition involves allowing of an application U/o.1 rule 10 of C.P.C at the instance of the 3rd party. This Court looking to the application U/o.1 rule 10 of C.P.C. finds, in paragraph no.3 therein the follows have been averred:-

"3. That the present petitioner/ intervener while a young boy of about 16 years of age was brought by Hruday Ballave Dey from his native village Tentulia pada in the year 1975 to render personal service to him as the plaintiff and defendant were not residing with him and were residing in their respective place of service. Hrudaya Ballave Dey after some years was duly impressed upon the petitioner for his sincerity and dedicated service to him and attached with love and affection and he treated the present petitioner as like as his son. Since there was no separate accommodation for the petitioner, in the year 1980 Hrudaya Ballav Dey orally gifted a portion of vacant land out of the suit property in presence of plaintiff and defendant and delivered physical possession of the said vacant portion to the extent of A0.033 decimal and allowed the petitioner to construct a Asbestos house for his separate accommodation. Hrudaya Ballav Dey assured to execute a registered gift deed in favour of the petitioner at a later stage. Accordingly the petitioner in pursuance to the oral gift and definite assurance to

execute registered gift deed in his favour, he has constructed a Asbestos house over the same. Thereafter Hruday Ballav Day given the petitioner in marriage. Since 1980 the petitioner has been residing in the said Asbestos house along with his family members continuously without any interruption hindrance obstructions from any quarter till date.”

This Court here finds, there is prima facie claim of right over a portion of the property as well as in the manner described therein by the 3rd party. In their opposition the Opposite Parties i.e. the present Petitioners in paragraph no.8 brought as follows :

“8. That the allegations made out at para-6 of the petition are all false imaginary and concocted. It is false to say that at this para, the defendant was being satisfied with the intervener’s service and allowed him to renovate the said asbestos room over an area of A0.033 dec. described in the schedule. This is quite false and concocted. Even if assuming that defendant being permitted to reside in the suit land, he can not exercise his ownership thereof. On basis of such a fake deed of Acknowledgement of gift, the petitioner can not exercise his ownership over any portion of the suit land and the other allegations of this para are just repetitions of earlier facts.”

2. It is at this stage of the matter Mr. Mishra, learned counsel for the Petitioner claims that even assuming that the 3rd party is in possession of a portion of the disputed land involved in the pending suit, but as he is not seeking any claim either questioning right of the

3 rd party or eviction of such party, such a party need not be added to such proceeding.

3. Considering the submission made by Mr. Mishra, learned counsel for Petitioner, this Court directs for issuing notice on the question of admission.

3. Notice be issued to the Opposite Parties by way of Speed Post / Registered Post with A.D. fixing a short returnable date. Requisites for issuance of notice shall be filed within three working days hence.

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