

(2024) 05 OHC CK 0121
In the Orissa High Court
Case No : CMP No.126 Of 2024

Padmabati Pradhan

APPELLANT

Vs

Harihara Mohanta And Another

RESPONDENT

Date of Decision : 14-05-2024

Acts Referred:

Code of Civil Procedure, 1908 — Section 80, Order 1 Rules 10

Citation : (2024) 05 OHC CK 0121

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

Bench : Single Bench

Advocate : Abhishek Dash, Amiya Kumar Mishra

Final Decision : Disposed Of

Judgement

K.R. Mohapatra, J

1. This matter is taken up through hybrid mode.
2. Order dated 29th July, 2023 (Annexure-1) passed by learned 1st Additional Senior Civil Judge, Baripada in Civil Suit No.102 of 2020 is under challenge in this CMP, whereby an application filed by the Plaintiff-Opposite Party No.1 to implead the Collector-cum-District Magistrate, Mayurbhanj and Tahasildar, Baripada as parties to the suit, has been allowed.
3. Mr. Dash, learned counsel for the Petitioner submits that the suit has been filed by the Plaintiff-Opposite Party No.1 for declaration that the registered sale deed executed by the recorded tenant in favour of the Defendant No.1-Petitioner is null and void and for permanent injunction to the extent of the land purchased by the Plaintiff. During pendency of the suit, an application under Order I Rule 10 CPC was filed by the Plaintiff-Opposite Party No.1 to implead the Collector and District Magistrate, Mayurbhanj and Tahasildar, Baripada Town as parties to the suit complying with the provision under Section 80 CPC.
4. Mr. Dash, learned counsel for the Petitioner further submits that while

adjudicating the matter, learned trial Court only reiterated the contention of the Plaintiff-Opposite Party No.1 in the petition under Order I Rule 10 CPC to the effect that Schedule 'A' land of the plaint has already been merged with the Sarali River and the river is running adjacent to Plot No.318/434 under Khata No.153/99 towards eastern side of that plot. Thus, the Tahasildar, Baripada town should not have been issued the ROR in favour of the Petitioner and convert it to 'Gharabari' as there was no land available. It is his submission that the suit is inter se between the Plaintiff and Defendant No.1. Thus, by impleading the government officials as parties, the scope of the suit is enlarged without seeking amendment of the suit. The scope of the suit does not permit implection of any of the parties much less any government officials.

5. Learned trial Court, while adjudicating the petition under Order I Rule 10 CPC, did not also discuss the ingredients and requirements of Order I Rule 10 CPC. The impugned order is a non-speaking one and not sustainable. He, therefore, prays for setting aside the impugned order under Annexure-1.

6. Mr. Mishra, learned Additional Government Advocate vehemently objects to the same. It is his submission that since the Plaintiff- Opposite Party No.1 has taken a plea that the part of the suit property has been merged with Sarali River, the Defendant No.1 has lost right, if any, over the suit property by virtue of the sale deed executed in his favour. Thus, for effective adjudication of the suit, presence of the Collector and District Magistrate, Mayurbhanj and Tahasildar, Baripada town is necessary for proper adjudication of the suit. Hence, learned trial Court has committed no error in allowing the petition under Order I Rule 10 CPC.

7. Issuance of notice to the Opposite Party No.1 for their response would further delay the matter. Thus, in view of the order proposed to be passed in this CMP, this Court dispensing with the service of notice on Opposite Party No.1, proceeds with the matter.

8. Taking into consideration the submission made by learned counsel for the parties and on perusal of the record, it appears that the dispute is with regard to validity of the sale deed executed in favour of the Defendant No.1-Petitioner. The Plaintiff-Opposite Party No.1 alleges that Schedule 'A' land of the plaint merged with Sarali River and the river is running adjacent to Plot No.318/434 under Khata No.153/999 towards eastern side of the plot. Thus, he alleges that Tahasildar should not have issued ROR in favour of the Defendant No.1 and converted the same to 'Gharabari'. No prayer as such is made against the government officials, namely, the Collector and District Magistrate, Mayurbhanj and Tahasildar, Baripada town in the suit. It is also not clear as to how the presence of the Government officials is necessary for effective adjudication of the suit. On perusal of the impugned order under Annexure-1, it does not appear that whether the government officials are necessary or proper parties to the suit as no discussion to that effect is made in the impugned order.

9. In that view of the matter, this Court feels that petition under Order I Rule 10 CPC filed by the Plaintiff-Opposite Party No.1 requires fresh consideration.

10. Accordingly, the impugned order under Annexure-1 is set aside and the matter is remitted to learned 1st Additional Senior Civil Judge, Baripada to consider the petition under Order I Rule 10 CPC afresh giving opportunity of hearing to the parties concerned keeping in mind the observations made hereinabove.

11. The CMP is accordingly disposed of.

12. Since the CMP is disposed of without issuing notice to the Opposite Party No.1, he is at liberty to seek for variation of this order, if he feels aggrieved.

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

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