

(2017) 02 OHC CK 0035
In the Orissa High Court
Case No : C.M.P. No. 805 of 2015

Pritish Kumar Giri

APPELLANT

Vs

Rusuni Mohanta

RESPONDENT

Date of Decision : 03-02-2017

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 10 (2)

Citation : (2017) 172 AIC 772 : (2017) AIRCC 1251

Hon'ble Judges : A.K. Rath, J.

Bench : Single Bench

Advocate : Mr. S.R. Pattnaik and Mrs. P. Pattnaik, Advocates, for the Petitioner;
Mr. D.P. Mohanty, Advocate, for the Opposite Party Nos. 1 to 10

Final Decision : Dismissed

Judgement

Dr. A.K. Rath, J.—This petition challenges the order dated 16.04.2015 passed by the learned Civil Judge (Senior Division), Rairangpur in Civil Suit No.163 of 2014, whereby and where under the learned trial court allowed the application of the defendants 5 to 10 under Order 1, Rule 10 CPC to strike out their names.

2. The petitioners as well as opposite party no.11 as plaintiffs instituted Civil Suit No.163 of 2014 in the court of the learned Civil Judge (Senior Division), Rairangpur for declaration of title, conformation of possession and permanent injunction impleading opposite parties 1 to 10 as defendants. Pursuant to issuance of summons, defendants 1 to 4 entered appearance and filed a written statement denying the assertions made in the plaint. While the matter stood thus, defendants 5 to 10 filed an application under Order 1, Rule 10 (2) CPC to strike out their names stating therein that they have no direct interest in the subject-matter of the suit. They are neither necessary nor proper parties to the suit. The plaintiffs filed an objection to the same. Learned trial court came to hold that no relief is claimed against defendants 5 to 10. Their presence is not necessary to enable the court to pass a decree. Held so, learned trial court

allowed the application.

3. Heard Mrs. P. Pattnaik, learned counsel for the petitioners and Mr. D.P. Mohanty, learned counsel for the opposites 1 to 10.

4. Mrs. P. Pattnaik, learned counsel for the petitioners, submitted that the plaintiffs are the dominus litis. In 2013, defendant no.1 clandestinely recorded the suit land in her favour. On coming to know about the same, the plaintiffs applied for the identification of the land by the Amin/RI. The R.I, Rairangpur visited the spot, measured the land and submitted the report to the Tahasildar, Rairangpur. Thereafter, defendant no.1 with her sons and other defendants created disturbances on the possession of the plaintiffs. Defendants 9 and 10 encouraged and abetted by defendants 5 and 6 to demolish the fence on the southern side of the suit land and, as such, they are proper parties to the suit.

5. Per contra, Mr. D.P. Mohanty, learned counsel for the opposites 1 to 10, submitted that the entire dispute is between the petitioners and defendants 1 and 4. No relief is claimed against defendants 5 to 10 and, as such, they are neither necessary nor proper parties to the suit.

6. Sub-rule (2) of Rule 10, Order 1 CPC invests the Court with a discretionary jurisdiction to strike out or add parties. The same read thus;

"10. Suit in name of wrong plaintiff. - (1) xxx xxx xxx

(2) Court may strike out or add parties - The Court may at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the court to be just, order that the name of any party improperly joined, whether as plaintiff or defendant, be struck out, and that the name of any person who ought to have been joined, whether as plaintiff or defendant, or whose presence before the court may be necessary in order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the suit, be added."

7. The distinction between a necessary party and a proper party is well known. In *Udit Narain Singh Malpaharia v. Additional Member Board of Revenue, Bihar* and another, AIR 1963 SC 786, the apex Court held that a necessary party is one without whom no order can be made effectively; a proper party is one in whose absence an effective order can be made but whose presence is necessary for a complete and final decision on the question involved in the proceeding.

8. In *Razia Begum v. Sahebzadi Anwar Begum and others*, AIR 1958 SC 886, the apex Court held that it is firmly established as a result of judicial decisions that in order that a person may be added as a party to a suit, he should have a direct interest in the subject matter of the litigation whether it raises questions relating to moveable or immoveable property.

9. In *Indrajit Dandasena and others v. Mangal Charan Dandasena and others*, 57 (1984) CLT 31, a Division Bench of this Court held that the maxim "dominus litis"

means the plaintiff is the master of suit. It was further held that the rule of dominus litis is subject to the powers of the Court under Order 1, Rule 10 (2) of the Code.

10. Reverting to the facts of the case at hand and keeping in view the aforesaid principles, this Court finds that the subject- matter of dispute pertains to Schedule-B land. The assertion of the plaintiffs is that in 2013, defendant no.1 got the land recorded in her name. Thereafter, they made an application for demarcation of the suit land. The R.I., Rairangpur visited the spot, measured the land and submitted the report to the Tahasildar, Rairangpur on 8.8.2014. Thereafter, defendant no.1 with others created disturbances on the possession of the plaintiffs. Thus the defendants 5 to 10 are neither necessary nor proper parties to the lis. Learned trial court has rightly struck out their names.

11. In the result, the petition, being devoid of merit, is dismissed.