
(2019) 02 OHC CK 0020
In the Orissa High Court
Case No : C.M.P. No.984 Of 2017

Ramakanta Sahoo And Others	Vs	APPELLANT
Jagannath Sahoo And Others		RESPONDENT

Date of Decision : 06-02-2019

Acts Referred:

Constitution Of India, 1950 — Article 227, 332
Code Of Civil Procedure, 1908 — Order 1 Rule 10(2)

Citation : (2019) 02 OHC CK 0020

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

Bench : Single Bench

Advocate : G.N. Rout, P.C. Sahu

Final Decision : Allowed

Judgement

Dr. A.K.Rath, J

1. Â By this petition under Article 227 of the Constitution, challenge is made to the order dated 24.03.2017, passed by the learned Civil Judge (Senior

Division), Nimapara, in I.A. No. 157 of 2016, whereby and whereunder, learned trial Court suo moto impleaded the Manager, Punjab National Bank,

Gop as a party to the suit.

2. Umakanta Sahoo, predecessor-in-interest of petitioner nos.2 to 5 and petitioner nos.1 and 6 to 8, instituted the suit for partition. Defendant no.1-

opposite party no.1 filed an application for a direction to the Manager, Punjab National Bank to pay rent to the parties in three equal shares. By order

dated 23.02.2017, learned trial court observed that the Branch Manager, Punjab National Bank is not a party to the suit. In his absence, no direction

can be issued. Held so, it directed defendant no.1 to implead the Manager, Punjab National Bank as a party.

3. The plaintiff filed an application to recall the said order. By order dated 24.03.2017, learned trial court held that relief has been sought for by

defendant no.1 against the Manager, Punjab National Bank, Gop. Held so, it rejected the application.

4. Heard Mr. G.N. Rout, learned counsel for the petitioners and Mr. P.C. Sahu, learned counsel for opposite party no.1. None appears for opposite party no.2.

5. Mr. Rout, learned counsel for the petitioners submits that in a suit for partition, the Manager, Punjab National Bank is neither a necessary party nor proper party. He places reliance on a decision of this Court in the case of Janaki Das v. Sidheswar Das and others, 2017 AIR CC 2319 (ORI).

6. Per contra, Mr. Sahu, learned counsel for defendant no.1-opposite party no.1 submits that Manager, Punjab National Bank is in occupation of the premises. In view of the same, learned trial court in exercise of its power under Order 1 Rule 10 (2) CPC impleaded the Manager, Punjab National

Bank. There is no perversity in the said order.

7. In Janaki Das, this Court held :-

“11. In a suit for partition, the plaintiff is bound to implead as defendant :

(i) the heads of all branches;

(ii) females who are entitled to a share on partition;

(iii) the purchaser of a portion of the plaintiff's share, the plaintiff himself being a coparcener;

(iv) if the plaintiff himself is a purchaser from a coparcener, his alienor.

The above are necessary parties and if any of them is not joined, the suit is liable to be dismissed. The entire joint family must be represented either expressly or

implicitly. (Article 332 of Mulla Hindu Law). Article 332 further provides that it is desirable that the following persons should be made parties; though not necessary

parties, they are proper parties to the suit:

(i) a mortgagee with possession of the family property or of the undivided interest of a coparcener;

(ii) simple mortgagees of specific items of the family property;

(iii) purchaser of the undivided interest of a coparcener;

(iv) persons entitled to provision for their maintenance and marriage, i.e.,

widows, daughters, sisters and such like and distinguished heirs;

(v) any person entitled to maintenance from the family.

The plaintiff may also implead any other coparcener or any person interested in the family property such as a mortgagee or a lessee. Such a person may himself apply

and be made a party.â??

8. Reverting to the facts of the case and keeping in view the law laid down by this Court in the decision cited supra, this Court finds that the Manager,

Punjab National Bank, Gop is a tenant. A tenant is neither a necessary party nor a proper party in a suit for partition. Learned trial court committed a

manifest illegality in impleading the Manager, Punjab National Bank.

9. Resultantly, the order dated 24.03.2017, passed by the learned Civil Judge (Senior Division), Nimapara in I.A. No. 157 of 2016 is quashed. The

petition is allowed. Since the suit is of the year 2007, learned trial court shall do well to conclude the hearing of the suit within a period of three

months.

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