

(2004) 12 OHC CK 0023

In the Orissa High Court

Case No : Writ Petition (C) No. 9034 of 2003

Smt. Bayani ' Budhimani Malik

APPELLANT

Vs

Smt. Dukhamani Dei and Others

RESPONDENT

Date of Decision : 15-12-2004

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 10
Constitution of India, 1950 — Article 226, 227

Citation : (2005) 99 CLT 452

Hon'ble Judges : L. Mohapatra, J

Bench : Single Bench

Advocate : M. Basu, S. Debdas and A.K. Behera, for the Appellant; G.P. Dutta, for the Respondent

Judgement

L. Mohapatra, J.—This Writ Application is directed against the Order dated 9.4.2002 passed by the Learned Civil Judge (Senior Division), Balasore in O.S. No. 926 of 2000 rejecting the petition filed under Order 1, Rule 10 of the Code of Civil Procedure.

2. As it appears from the record the Opp. Parties 1 to 5 have , filed the suit for partition of "B" Schedule property by metes and bounds and for passing a preliminary decree holding the "C" Schedule property as the purchased property of the plaintiffs-Opp. Party Nos. 1 to 5 apart from other reliefs. Before the contesting Defendants 1 and 2 filed the written statement, the present petitioner filed an application under Order 1, Rule 10, CPC to be impleaded as defendant on the ground that she is the sister of Defendants 1 and 2 and as such she is a necessary party in the suit. The said application having been rejected, this Writ Application has been filed.

3. The Learned Counsel appearing for the petitioner submitted that the plaintiffs-opposite parties having prayed for partition of "B" Schedule property and the petitioner being a co-sharer as sister of Defendants 1 and 2 she is a necessary party in the suit and, therefore, the application under Order 1, Rule 10, CPC

should have been allowed. Apart from the above, it was also contended by the Learned Counsel for the petitioner that in the written statement filed by the Defendants 4(a), 4(b) and 4(c) it is clearly admitted that the present petitioner is the sister of Defendants 1 and 2 and in view of such admission by the aforesaid defendants, there was no reason on the part of the Learned Trial Court to reject the application filed by the petitioner for being impleaded as a party.

4. Shri Dutta, the Learned Counsel appearing for the opposite parties, on the other hand, submitted that there is a grave doubt as to whether the petitioner is the sister of the Defendants 1 and 2 in view of the documents filed before the Trial Court as well as this Court. The Learned Counsel drew attention of the Court to the Yadast and submitted that the names of Defendants 1 and 2 only appear in the said Yadast as legal heirs of Punananda Mallik. There is no mention of the name of the petitioner in the said Yadast. Apart from the above, it was also contended by Shri Dutta that the petitioner has failed to establish her direct interest in the property and, therefore, she is not a necessary party in the suit. It was also contended by the Learned Counsel Shri Dutta that in the application for intervention the petitioner has specifically averred that she intends to challenge the sale deed executed in favour of the opposite parties by the Defendants 1 and 2 and such plea cannot be entertained as the same is time barred. According to Shri Dutta, if the petitioner is allowed to be impleaded as a party, a time barred plea shall be raised before the Court and as such, the same shall enlarge the scope of the suit. Reliance was placed on the decisions of this Court in the case of Asit Kumar Swain Vs. Krupasindhu Swain and Another, and in the case of Rabindra Mohapatra and Others Vs. Souri Prasad Malla and Others,

5. Upon hearing the Learned Counsel for the parties and on perusal of the documents placed before the Court, it appears that the petitioner claiming to be the sister of the Defendants 1 and 2 had filed an application to be impleaded as a party. The Defendants 4(a), 4(b) and 4(c) in their written statement have also admitted that the petitioner is the sister of the Defendants 1 and 2. On the other hand, the Yadast prepared does not indicate that the petitioner is one of the legal heirs of Punananda Malik. The names of Defendants 1 and 2 are only mentioned as legal heirs of Punananda Malik. Though much reliance was placed on the averments made in the written statement filed by the Defendants 4(a), 4(b) and 4(c) I am of the view that Defendants 1 and 2 are the best persons to say as to whether the petitioner is their sister or not. So far as objection raised by the Learned Counsel for the opposite parties is concerned, in the event it is proved that the petitioner is the sister of Defendants 1 and 2 one of the prayer in the suit being for partition of "B" Schedule property, it cannot be said that she is not a necessary party to the suit having no interest in the suit property, Under these circumstances, I am of the view that the Trial Court instead of disposing of the applications should have waited till filing of the written statement by Defendants 1 and 2.

6. I, therefore, set aside the impugned order and direct the Trial Court to

consider the application afresh after filing of the written statement by Defendants 1 and 2. In the event the Defendants 1 and 2 fail to file their written statement, the Trial Court shall reconsider the application on its own merit on the existing materials. It is further directed that while considering the application afresh, the Trial Court shall take into consideration all the submissions made by the Learned Counsel appearing for the parties before this Court and shall also take note of the decisions referred to above.

7. The Writ Application is accordingly disposed of.