

(2003) 03 OHC CK 0024

In the Orissa High Court

Case No : Civil Revision No. 142 of 2002

Sri Akshay Kumar Das

APPELLANT

Vs

Sri Kalpataru Sachinandan Trust and Others

RESPONDENT

Date of Decision : 20-03-2003

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 10, Order 1 Rule 10(2), 92, 92(1)

Citation : (2003) 03 OHC CK 0024

Hon'ble Judges : P.K. Tripathy, J

Bench : Single Bench

Advocate : G. Mukharjee, P.K. Mukharjee, S. Pattnaik, A.C. Panda and A. Pradhan, for the Appellant; B.H. Mohanty, B. Das, R.K. Naik, S.S. Mohanty, J.K. Behera, D.P. Mohanty and T.K. Mohanty, for the Respondent

Final Decision : Dismissed

Judgement

P.K. Tripathy, J.—Heard.

2. This Civil Revision is directed against the order passed on 2nd February, 2002 by learned District Judge, Khurda at Bhubaneswar in Title Suit No. 18 of 1997 by rejecting an application under Order 1 Rule 10 of the Code of Civil Procedure, 1908 (in short "the Code") filed by the Petitioner to add him as a party in that suit. Learned District Judge has opined that since the Plaintiffs have instituted the suit in accordance with the provision in Section 92 of the Code and they are taking care of the dispute, addition of the present Petitioner as a party to the proceeding is not necessary.

3. It appears from the plaint that the Plaintiffs have, inter alia, sought for the following reliefs:

(a) Declare that Plaintiff No. 2 Kalpataru Sebasangha represented by its Executive Body acting through its Secretary Plaintiff No. 3 is the legal trustee of Plaintiff No. 1 Trust and its property and is entitled to manage all the affairs of the Trust including its property as laid down in the Trust deed by the founder-

trustee with a direction to the Defendants, the defector trustees to hand over charge of the management of the Trust and its properties to the Plaintiffs within a date to be specified by the Hon''ble Court.

(b) That, alternatively if the Hon''ble Court is satisfied that there is scrambling for power among the members of the Plaintiff No. 2 Sangha for the management of the Trust and its properties or for some reason or other to the satisfaction of the Hon''ble Court, Plaintiff No. 1 Trust is being mismanaged, the Hon''ble Court be pleased to settle a scheme under Clause (G) of Sub-section (1) of Section 92 of CPC for its better management.

4. The averments in the plaint or the reply in the written statement by the contesting Defendants do not indicate that the presence of the Petitioner as a party to the litigation is necessary for an effective adjudication of the dispute in accordance with the provision of law in Order 1 Rule 10(2) of the Code. If his evidence is necessary he may be called as a witness by either of the parties. Under such circumstances, as rightly argued by learned Counsel for the contesting Opposite party members/Defendants, this Court finds no illegality in the impugned order passed by the learned District Judge. Accordingly, the impugned order is not interfered with and the Civil Revision is dismissed.

5. At the time of hearing of this Civil Revision Opposite party raised a contention relating to non-maintainability of the Civil Revision being an interlocutory order. In view of the dismissal of the Civil Revision on the ground noted in the preceding paragraph, the issue on maintainability of the revision is not required to be considered in this revision.