

IN THE HIGH COURT OF ORISSA AT CUTTACK

CMP No. 874 OF 2023

Nihar Ranjan Swain

.... Petitioner

Mr. Maheswar Mohanty, Advocate

-versus-

Jyoshna Mayee Swain and others

.... Opp. Parties

CORAM:

JUSTICE K.R. MOHAPATRA

ORDER

31.08.2023

Order No.

01. 1. This matter is taken up through hybrid mode.
2. Order 15th July, 2023 (Annexure-6) passed by learned Civil Judge, Chandikhole in C.S. No.99 of 2021 is under challenge in this CMP, whereby an application filed by Defendant No.1-Petitioner under Order 1 Rule 10 CPC to delete the name of Defendant Nos.4 and 5 from the cause title of the plaint, has been rejected.
3. Mr. Mohanty, learned counsel for the Petitioner submits that the Opposite Party No.1 as the Plaintiff has filed the suit to declare the deed of acknowledgment of adoption made in favour of Defendant No.1-Petitioner to be null and void and to declare that the Defendant No.1 is not the adopted son of the Plaintiff and her husband Udaynath Swain and for cost. The Defendant No.1-Petitioner has already appeared and filed his written statement. Defendant Nos.2 and 3 are the natural parents of Defendant No.1. Defendant Nos.4 and 5 are no way concerned with the relief claimed in the suit. They are also not signatories to the deed of acknowledgment. Thus, they are neither necessary nor proper parties to the suit. Hence, Defendant NO.1-Petitioner filed an application under Order 1 Rule 10 CPC to delete the name of Defendant Nos.4 and 5 from the cause title of the plaint.

The said application has been rejected on the ground that Defendant No.4 is the 2nd wife of said Udaynath Swain and Defendant No.5 is their son. Thus, they are necessary parties to the suit.

4. It is his contention that neither any relief is claimed by the Plaintiff against Defendant Nos.4 and 5 nor they will be prejudiced in any manner, if a decree is passed in favour of the Plaintiff. Thus, they are neither necessary nor proper parties to the suit. It is submitted that issues have not yet been framed and the Defendant No.1-Petitioner has a liberty to file draft issues assailing the mis-joinder of Defendant Nos.4 and 5 to the suit. Hence, the impugned order under Annexure-6 is not sustainable and is liable to be set aside.

5. Considering the submission made by learned counsel for the Petitioner and on perusal of the record, it appears that neither the Plaintiff nor Defendant Nos.4 and 5 themselves have made any application to delete their name. It is the Defendant No.1 against whom the relief is claimed in the suit has filed the petition to delete the name of Defendant Nos.4 and 5.

6. Law is well settled that the Plaintiff is the *dominus litis* and it is up to him to choose his opponent. The Defendant No.1 has no *locus standi* to pray for deletion of the names of Defendant Nos.4 and 5 in the suit. As such, this Court finds no ground to interfere with the impugned order.

7. Accordingly, the CMP being devoid of any merit stands dismissed.

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

(K.R. Mohapatra)
Judge