



IN THE HIGH COURT OF ORISSA AT CUTTACK

CMP No.537 of 2026

Swayamsiddha Singhsamant

....

Petitioner

Represented by Adv.–
Mr. Biswambar Mohanty, Advocate

-Versus-

**Narayan Prasad Singhsamant and
others**

....

Opposite Parties

**CORAM:
HON' BLE THE CHIEF JUSTICE**

Order No.

**ORDER
08.05.2026**

01. 1. The instant petition arises from an order dated 20th December, 2025 passed by the Civil Judge (Senior Division), Khandapada in Civil Suit No.6 of 2021 whereby and whereunder an application under Order 1 Rule 10 (2) of the Code of Civil Procedure, 1908 filed by the plaintiff-petitioner is rejected.
2. Admittedly, the suit is filed by the plaintiff-petitioner asserting preferential right in terms of a compromise decree passed in a partition suit. The said decree contains a preferential right to



purchase the share separated by virtue of a compromise decree to the other co-sharers, who shall be offered first before the sale is effected to a stranger of the family. Admittedly, one of the parties to the said compromise suit sold, transferred and conveyed his allotted portion to defendant No.2 by executing and registering a sale deed.

3. The application for addition of party is taken out to implede the other co-sharer, who has been allotted a separate portion in terms of the said compromise deed as he also has a preferential right in terms of the said compromise decree. The trial court proceeded to reject the said application as the party sought to be impleded is neither a necessary nor a proper party.

4. According to the petitioner, since he was also a co-sharer at a relevant point of time and the shares held jointly got separated by virtue of a compromise decree, he can also assert his preferential right emanating from the said compromise decree and, therefore, he can be regarded as a necessary and proper party.

5. Right of preference though recognized in law can be waived and/or abandoned by a party. The party sought to be



impleded has not come forward, either asserting his right in an independent proceeding or has approached the Court in the suit filed by the plaintiff-petitioner. While considering an application for addition of party, the Court must go into the aspect whether a person sought to be impleded is a necessary or proper party. The necessary party is one in whose absence the adjudication cannot be made. On the other hand, the necessary party is a one whose presence is necessary for complete and effective adjudication of the issues involved in the said suit.

6. Since a preferential right is asserted by the plaintiff-petitioner against the stranger purchaser, this Court does not find that the presence of the other co-sharer is at all necessary in relation to the subject dispute.

7. This Court, thus, does not find any illegality and/or infirmity in the impugned order. The instant petition is, accordingly, dismissed. No order as to costs.

(Harish Tandon)
Chief Justice