



IN THE HIGH COURT OF ORISSA AT CUTTACK

RSA No.264 of 2002

I.A. No.415 of 2025

Harmohan Khuntia

.....

Appellant(s)

Represented By
Mr.R.K.Mohanty,Sr.Advocate

-versus-

Ashamani Jena

.....

Respondent(s)

Represented By
Mr.R.K.Agarwal,Advocate

CORAM:

THE HON'BLE MR. JUSTICE ANANDA CHANDRA BEHERA

ORDER

Order No.

16.04.2025

15. 1. This matter is taken up through Hybrid Arrangement (Virtual /Physical Mode).
2. This I.A. has been filed on behalf of the third party under Order 1 Rule 10 of the C.P.C, 1908 praying for his impleadment as an adopted son of sole deceased respondent after serving copy thereof on the learned counsel for the appellant.
3. The learned counsel for the appellant has already filed objection against the I.A. of the third party disputing his status as the adopted son of the sole deceased respondent stating therein that, the third party intervener is not the adopted son of the sole deceased respondent, for which, he cannot be made as a party in the 2nd appeal as the successor of the sole deceased respondent.
4. As per Order 22 Rule 5 of the C.P.C., 1908,
- “where a question arises as to whether any person is or is not the legal representative of a deceased plaintiff or a deceased defendant, such question shall be determined



by the Court.

Provided that, where such question arises before an Appellate Court, that Court may, before determining the question, direct any sub-ordinate Court to try the question and to return the records together with evidence, if any, recorded at such trial, Its findings and reasons therefore and the Appellate Court may take the same into consideration in determining the question”.

5. Here, in this I.A. at hand, when a question arises, whether the third party intervener Sagar Jena is the adopted son of the sole deceased respondent Ashamani Jena or not, then, in view of the provisions of law envisaged under Order 22 Rule 5 of the C.P.C., this matter is required to be determined through an enquiry by the Trial Court as per the mandates of the Order 22 Rule 5 of the C.P.C.

6. The Trial Court in the suit is learned Additional Civil Judge (Sr.Division), Puri, from whose decision, this 2nd appeal has arisen.

For which, as per the proviso of Order 22 Rule 5 of the C.P.C., it is felt proper to direct the learned Additional Civil Judge (Sr.Division), Puri to make an enquiry and to determine the question i.e. whether, the third party of this I.A. i.e. Sagar Jena is the adopted son of the sole deceased respondent Ashamani Jena or not?

7. So, registry is directed to transmit the copy of this order along with the copy of the I.A., objection against the same, copies of the appeal memo of the 2nd appeal and judgments and decrees of both the Courts below to the Court of learned Additional Civil Judge (Sr.Division), Puri for an enquiry as per Order 22 Rule 5 of the C.P.C. in the above matter as clarified above and to complete the same within a period of two months from the date of communication of this Order



and to send the report along with the records thereof to this court in reference to this 2nd appeal vide R.S.A. No.264 of 2002 for necessary order on the basis of the same.

8. List this matter on 30.06.2025.

(A.C. Behera)
Judge

Binayak