



IN THE HIGH COURT OF ORISSA AT CUTTACK

CMP No.1352 of 2024

Masood Akram

.... **Petitioner**
Mr. A.P. Bose, Advocate

-Versus-

Rasida Khatoon and others

.... **Opposite Parties**
None

CORAM:
MR. JUSTICE R.K. PATTANAİK

ORDER
30.04.2025

Order
No.
01.

1. Heard Mr. Bose, learned counsel for the petitioner.
2. No notice is issued to opposite party No.1 as the matter is disposed of at the stage of admission. Notices vis-à-vis proforma opposite parties are dispensed with as the same is not necessary.
3. Instant petition is filed by the petitioner challenging the correctness of the impugned order dated 6th November, 2024 as at Annexure-1 passed in CS No.68 of 2022 by learned Civil Judge (Senior Division), Champua, whereby, an application under Order 6 Rule 17 and Order 1 Rule 10 read with Section 151 CPC pressed into service by opposite party No.1 to implead a lis pendense purchaser has been allowed.
4. Mr. Bose, learned counsel for the petitioner submits that the petitioner and opposite party No.1 acquired the interest by virtue of a decree in an earlier suit i.e. TS No.30 of 1993, whereafter, the petitioner alienated the same in favour of a third party, who was



sought to be impleaded at the instance of opposite party No.1. The contention is that the purchaser is not a necessary party and that apart, opposite party No.1 during the life time of their father cannot and could not have any interest over the suit land as per the Mohammedan law. The submission is that the father has the exclusive domain to effect transfer of property which cannot be challenged by any one including his sister as per the personal law and therefore, under the circumstances narrated above and pleaded, the suit land has been disposed of. It is claimed that the father of the petitioner alienated the land in question in favour of the latter and he further transferred to a third party, who has been allowed to be impleaded as one of the defendants on the request of opposite party No.1.

5. On a reading of the impugned order at Annexure-1, though, learned court below has taken cognizance of the ingredients of Order 1 Rule 10 CPC with reference to the following decisions of the Apex Court in **Yogesh Goyanka Vrs. Govind and others AIR 2024 SC 3903** and **Shuvam Constructions Pvt. Ltd. Vrs. Smt. Babita Mohanty and another 2010 (I) OLR-97** and Section 52 of the Transfer of the Property Act but has not considered such aspects of the case as it has been pleaded by the petitioner so revealed from a copy of the objection i.e. Annexure-3. As the contention is that the father of petitioner and opposite party No.1 had the exclusive right and domain over the property in question and it was alienated by him in favour of the petitioner and further transferred in favour of the third party purchaser and as such, no one can challenge it in view of the plea that such is the law governing the parties involved, the Court is of the view that the same is required to be re-examined. One more limb of argument of Mr. Bose, learned counsel for the petitioner is that once there has been a partition among the co-



sharers with a decree in place, it becomes the absolute interest of the co-shares, who has the right to dispose of the same in any manner whatsoever with a reference made to a decision of the Apex Court in **Angadi Chandranna Vrs. Shankar and others** (Civil Appeal No.5401 of 2025 arising out of SLP (C) No.6799 of 2022). The Court finally reiterates the view that as the plea advanced from the side of the petitioner as per Annexure-3 referring to the governed law applicable to the parties has not been taken judicial notice of by learned court below, such an application under Order 1 Rule 10 CPC moved at the behest of opposite party No.1 needs a fresh decision.

6. Accordingly, it is ordered.

7. In the result, the CMP stands allowed. Consequently, the impugned order dated 6th November, 2024 in CS No.68 of 2022 by learned Civil Judge (Senior Division), Champua is hereby set aside with a direction for a fresh consideration of application filed under Order 6 Rule 17 and Oder 1 Rule 10 read with 151 CPC and for orders upon hearing the respective parties. In the circumstances, however, there is no order as to costs.

8. Urgent certified copy of this order be issued as per rules.

(R.K. Pattanaik)
Judge

TUDU

Signature Not Verified

Digitally Signed
Signed by: THAKURDAS TUDU
Reason: Authentication
Location: OHC, CTC
Date: 03-May-2025 11:05:21

