

**ORISSA HIGH COURT: CUTTACK**

W.P.(C) No.4686 of 2007

In the matter of an application under Articles 226 and 227 of the Constitution of India.

-----  
Rama Chandra Mudra

....

*Petitioner*

*-versus-*

Raghunath Mudra & another

....

*Opp. Parties*

For Petitioner : M/s. A.R. Dash, S. Sahoo,  
R.N. Behera, S.K. Nanda-I,  
B. Mohapatra, M.C. Swain &  
S.N. Sahoo.

For Opp. Parties : M/s. P.K. Mohanty, D.K. Mohanty,  
A.P. Bose, P.K. Samantaray,  
S.N. Biswal, M.R. Dash &  
P. Jena.

*(for O.P. 1)*

-----  
**Date of Judgment: 22.07.2008**  
-----

P R E S E N T:

**THE HONOURABLE KUMARI JUSTICE SANJU PANDA**

-----  
**S. Panda, J.** In this writ application the petitioner has challenged the order dated 3.4.2007 passed by the learned Civil Judge (Junior Division), Puri in C.M.A. No.90 of 2006 wherein he rejected the application filed by the petitioner under 1, Rule 10 read with Section 151 of the Civil Procedure Code to implead him as a party to the dispute.

2. The learned counsel for the petitioner contended that he purchased the property from the defendant no.1 Gopinath Mohanty, who contested the suit. The defendant exercised his right over the suit property after the disposal of the suit. Thereafter said Gopinath Mohanty

executed a registered sale deed on 14.9.2004 in favour of the petitioner. By virtue of the said sale deed, the petitioner enjoyed the suit property since the date of purchase.

3. The undisputed fact in the case is that Original Suit No.270 of 1983-I was dismissed for non-prosecution on 30.11.1988. After the dismissal of the suit, defendant –Gopinath Mohanty was continuing and enjoying the suit property and the present petitioner purchased the suit property from the said defendant through registered sale deed dated 14.9.2004. Now, after 18 years the opposite parties have filed an application under Order 9, Rule 9 of the Civil Procedure Code to set aside the dismissal order and the same has been registered as C.M.A. No.90 of 2006. As the petitioner purchased the suit property on 14.9.2004, a right accrued to the petitioner under Order 22, Rule 10 of the Civil Procedure Code. As such the petitioner is a necessary party to the proceeding under Order 9, Rule 9 of the Civil Procedure Code.

4. Therefore, this Court set asides the impugned order dated 3.4.2007 passed by the learned Civil Judge (Junior Division), Puri in C.M.A. No.90 of 2006 and directs the court below to implead the petitioner as a party to the suit and proceed with the matter in accordance with law.

The writ application is accordingly disposed of.

.....  
S. Panda, J.