

W.P.(C) No.11189 of 2004

30.09.2015      Assailing the order dated 30.8.2004 passed by the learned 1st Additional Civil Judge (Sr. Divn.), Cuttack in T.S. No.273 of 2000, the instant petition is filed under Article 227 of the Constitution of India. By the said order, learned trial court allowed the application for impleadment of opposite party no.1 as defendant.

Title Suit No.273 of 2000 was originally filed by one Manorama Deo for declaration of title in respect of the suit property against opposite party nos.2 and 3. She expired whereafter the present petitioners, who are the legal heirs and representatives, have been substituted as plaintiffs. The plaintiffs assert their title by way of adverse possession. They admit that the suit property stands in the name of the Department of Irrigation and Power, Government of Orissa. While the matter stood thus, the opposite party no.1 filed an application under Order 1 Rule 10 C.P.C. for impleadment. It is stated that the suit plot was the subject matter of dispute in O.J.C. No.5132 of 2000. A Division Bench of this Court on 13.2.2001 directed the Municipal authorities to demolish the encroachments, if it found after the measurement. The matter pertains to encroachment of road. By order dated 30.8.2004, learned trial court allowed the application.

Heard Mr. T.K. Mohanty, learned counsel for the petitioners, Mr. Panda, learned counsel for the opposite party no.1 and learned Additional Government Advocate for the opposite party nos.2 and 3.

The distinction between a necessary party and a proper party is well known. In *Udit Narain Singh Malpaharia v. Additional Member Board of Revenue, Bihar* and another, AIR 1963 SC 786, the apex Court held that a necessary party is one without whom no order can be made effectively; a proper party is one in whose absence an effective order can be made but whose presence is necessary for a complete and final decision on the question involved in the proceeding.

In *Razia Begum v. Sahebzadi Anwar Begum and others*, AIR 1958 SC 886, the apex Court held that it is firmly established as a result of judicial decisions that in order that a person may be added as a party to a suit, he should have a direct interest in the subject-matter of the litigation whether it raises questions relating to moveable or immoveable property.

On the anvil of the decisions cited supra, the case of the petitioners is required to be examined.

Learned counsel for the opposite parties submits that the original plaintiff filed O.J.C. No.5132 of 2000 before this Court praying inter alia for a direction to the opposite parties not to demolish the building standing over hal settlement plot no.1733/1960 of mouza-Jhanjirmangala Unit No.35 of Cuttack Town. A Division Bench of this Court on 13.2.2001 considering the submissions of the counsel for the petitioner and Municipal Corporation directed that at fresh measurement of the land be taken on 17.2.2001. It was further observed that if after measurement, encroachment is found, the Municipal authorities are free to demolish the same. Taking a cue from the same, learned counsel for the opposite parties submits that the intervenor is a necessary party to the lis.

Per contra, learned counsel for the petitioners submits that the opposite party no.1 has no semblance of right, title and interest over the suit property. The suit property stands recorded in the name of the Department of Irrigation and Power, Government of Orissa. Thus, the intervenor is neither necessary nor proper party.

The order dated 13.02.2001 reveals that learned Senior Advocate appearing for the petitioner submitted that the petitioner would vacate any encroachment of the land, if found, and would render necessary assistance for demolition of the same. It was further submitted that the Municipal authorities found out encroachment alleged to have been made by the petitioner during her absence. With this factual scenario, the Division Bench of this Court directed for fresh measurement of the land. It was further observed that if after measurement, encroachment is found, the municipal authorities are free to demolish the same. The intervenor has direct interest in the subject matter of the suit. Thus, the intervenor is proper party to the suit.

There being no perversity or illegality in the order dated 30.8.2004 passed by the learned 1st Additional Civil Judge (Sr. Divn.), Cuttack in T.S. No.273 of 2000, this Court is not inclined to interfere with the same. Accordingly, the petition is dismissed. Since the suit is of the year 2000, learned trial court is directed to conclude the hearing of the suit by end of February, 2016.

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Dr.A.K.Rath, J.

