

IN THE HIGH COURT OF ORISSA AT CUTTACK

C.M.P. No.3 of 2022

Ananda Kumar Agarwal

.... ***Petitioner(s)***
Mr. K.K. Mohapatra,
Advocate

-versus-

Rajabala Agarwal

.... ***Opposite Party(s)***
Mr. A.K. Tripathy,
Advocate

**CORAM:
JUSTICE BISWANATH RATH**

ORDER
25.02.2022

Order No.

02.

1. This matter involves a challenge to the order allowing an application U/o.26 rule 9 of C.P.C. thereby directing to have inspection and for submission of report through Court Commissioner on the issue involved herein.
2. Considering the rival contentions of the parties and going through the provision at Order 26 rule 9 of C.P.C. this Court finds, there must be contingency existing requiring such application of provision at Order 26 rule 9 of C.P.C upon the parties entering into argument and satisfying the Court that the pleadings read together with the evidence so far as available unable to resolve the dispute raised in the application U/o.26 rule 9 of C.P.C. Undisputedly the application was moved and considered even before closure of evidence of both the parties. It is at this stage of the matter

Mr. Tripathy, learned counsel for the Opposite Party-Plaintiff brings to the notice of this Court that the defendants have already filed a memo claiming to have closed its evidence. Learned counsel for defendants opposed to such statement. Without entering into the above controversies, this Court directs, in the event there exists a memo at the instance of the defendant in the matter of closer of evidence and the Court has come to the conclusion that there is no further evidence by any side, let the trial commence and in the course of argument if the pleadings and the evidence all recorded does not answer the dispute arose through the application U/o.26 rule 9 of C.P.C, the same may be considered at that stage and order as appropriate be passed at that stage only, but however, before finalizing the trial.

In the above circumstance, this Court while setting aside the impugned order for being considered in appropriate stage, directs the trial court to keep the application U/o.26 rule 9 of C.P.C open to be considered in appropriate time as indicated hereinabove.

3. With the aforesaid direction the civil miscellaneous petition stands disposed of.

(Biswanath Rath)
Judge