

IN THE HIGH COURT OF ORISSA AT CUTTACK

CMP No.5 of 2022

Rasmita Nayak & Anr. ***Petitioner(s)***
Mr.D.P.Mohanty, Advocate

-versus-

Sushanta Kumar Ray ***Opposite Party(s)***
Mr.B.C.Ghadei.Advocate

**CORAM:
JUSTICE BISWANATH RATH**

**ORDER
18.02.2022**

Order No.
02

1. Heard learned counsel appearing for the parties.
2. This Civil Miscellaneous Petition involves a challenge to the order of reversion by the Appellate Authority in allowing F.A.O.No.04 of 2021 involving an issue under Order 39, Rule 1 & 2 of the Code of Civil Procedure. Taking this Court to the issue and the observation of the trial court, further reading through the observation of the Additional District Judge in disposal of Appeal, Mr.Mohanty, learned counsel for the petitioner advances his submission to the effect that both the courts appear to have entered into the merit involving the case vis-à-vis the sale deeds relied upon by the respective parties. Looking to the fundamental aspect in the consideration of an application under Order 39, Rule 1 & 2 of the Code of Civil Procedure, Mr. Mohanty, learned counsel for the petitioner submits that looking to the claim of the plaintiff seeking injunction, it becomes the duty of the court to consider such aspect to find prima facie case, balance of convenience and irreparable loss but it should be confined to the position of parties vis-à-vis the disputed property. Reading through the prayer involved therein, it is alleged that in the event both the courts are entered into examining the entry of sale

deeds involved coming to the conclusion involving an application under Order 39, Rule 1 & e of the Code of Civil Procedure.

3. Mr.Ghadei, learned counsel appearing for the plaintiff-opposite party herein has no dispute to the allegation of the petitioner and the manner of disposal but however while attempting to justify the impugned order passed by the Appellate Authority.

4. Considering the rival contentions of the parties, looking to the nature of relief sought for in the interim application filed under Order 39, Rule 1 & 2 of the Code of Civil Procedure appearing at Annexure-3 and looking to the purport behind considering the application under Order 39, Rule 1 & 2 of the Code of Civil Procedure, for the opinion of this Court even though there was a requirement for considering the sale deeds involved in entering into a prima facie consideration on such aspect, the trial court ought to have the substance involving the ingredient in determining of such issue. The core issue being position of the parties, in his approach under Order 39, Rule 1 & 2 of the Code of Civil Procedure seeking an injunction, it becomes the duty of the court considering such application to find out the possession of parties to pass an order of injunction.

5. It is keeping this in view, this Court finds there is no proper consideration by both the courts involved herein. In the process, this Court interfering in the order of the appellate court at Anenxure-6 however also keeping in view the observation of this Court in the matter of consideration of an application of this nature, remits the matter to the trial court for rehearing of the application under Order 39, Rule 1 & 2 of the Code of Civil Procedure afresh and decide the matter upon fresh hearing of the parties but however without adverting to the issues involving main suit.

6. Both the parties are directed to appear before the trial court on 04.03.2022 along with certified copy of this order and take the date of hearing involving application under Order 39, Rule 1 & 2 of the Code of Civil Procedure.

7. The Civil Miscellaneous Petition stands disposed of with the observation and direction made hereinabove but, however, with the order of remand.

(Biswanath Rath)
Judge

Sks

