

IN THE HIGH COURT OF ORISSA AT CUTTACK

CMP NO.22 OF 2022

Mrutunjaya Pati

....

Petitioner

Mr.N.C.Pati, Adv.

-versus-

Gunjuri Pati & Ors.

....

Opposite Party(s)

**CORAM:
JUSTICE BISWANATH RATH**

ORDER

8.2.2022

**Order
No.**

01.

1. Heard learned counsel for the Petitioner.
2. The CMP involves rejection of an Application under Order 22 Rules 4 & 9 of C.P.C. based on rejection of the Application for condonation of delay, as a consequence of rejecting an Application for setting aside abatement.
3. Undisputedly, the Plaint involves sole Plaintiff and sole Defendant. There is also no denial to the fact that both the Plaintiff and Defendant belong to same village, as clearly borne in the Cause Title of the Plaint. Again undisputedly, involving death of the sole defendant on 15.1.2013, Applications as desired involving substitution, condonation of delay and setting aside abatement were filed on 29.9.2021. There is admitted delay of almost more than seven years. For no denial that the Plaintiff and Defendant belong to

same village, this Court finds strange in the attempt of the Plaintiff in bringing such Applications after seven years and above in spite of clear information of death of a villager remaining in the same village. There is no bona fide action involved herein. Since plaintiff and defendant both belong to same village, there cannot be a plea of not coming to know of such incident by either party. It is considering the submission of the learned counsel for the Petitioner that the court is bound to issue notice in deciding the Applications for setting abatement and limitation for refusal to entertaining such Applications on the ground of seven years delay, for the opinion of this Court, there is no such requirement since this Court disbelieves the grounds in moving the Court with so much delay. In the event the Court was required to allow the Applications, such contingency may be there.

4. In the circumstance and for there is clear delay of seven years and above for filing such Application involving death of a neighbor residing in the same village, this Court finds, there is no infirmity in the impugned order of rejection of such Application.

5. The CMP thus stands dismissed for having no merit.

(Biswanath Rath)
Judge

M.K.Rout