

IN THE HIGH COURT OF ORISSA AT CUTTACK

CMP No. 1076 of 2022

Nahirun Nisha

....

Petitioner

Mr. Kalinga Keshari Mohapatra, Advocate

-versus-

Abdul Kasim Jalal Udin and others

....

Opp. Parties

**CORAM:
JUSTICE K.R. MOHAPATRA**

**ORDER
10.11.2022**

Order No.

01. 1. This matter is taken up through Hybrid mode.
2. This CMP has been filed assailing order dated 17th October, 2022 (Annexure-1) passed by learned Civil Judge (Senior Division), Pipili in IA No.46 of 2022 (arising out of CS No.75 of 2022), whereby an application filed by the Petitioner under Order XXXIX Rule 3 CPC has been rejected.
3. Learned counsel for the Petitioner submits that taking advantage of wrong recording of Plot in the name of Defendants/Opposite Parties they are constructing boundary wall over the land on which the Plaintiff/Petitioner claims easementary right of way. Defendants/Opposite Parties have already stacked materials for construction of boundary wall. Once the boundary wall is constructed Plaintiff/Petitioner will be deprived of access to her residential house. Hence, along with the interim application for temporary injunction, the Petitioner filed an application under Order XXXIX Rule-3 CPC

to entertain the interim application for injunction dispensing with service of notice on the Defendants/Opposite Parties. Learned trial Court, without properly considering the same, rejected the application resorting to hyper technicalities. Hence, this CMP has been filed.

4. The submission of learned counsel for the Petitioner makes it clear that the land over which the Petitioner is claiming right of way has been recorded in the names of the Defendants/Opposite Parties. There is no material on record except the pleading to show that Opposite Parties/Defendants are stacking materials for construction of the boundary wall. Rule-3 of Order XXXIX CPC makes it clear that the Court should adopt such procedure when purpose of granting injunction would be defeated by delay in considering the application. No such ground is made out in the petition under Order XXXIX Rule-3 CPC, as rightly observed by learned trial Court in the impugned order. Hence, this Court is not inclined to entertain the CMP.

5. The CMP is accordingly disposed of with an observation that the Petitioner may move IA No.46 of 2022 filed under Order XXXIX Rules 1 and 2 CPC after serving notice on the Opposite Parties.

Issue urgent certified copy of the order on proper application.

s.s.satapathy

(K.R. Mohapatra)
Judge