

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.4344 of 2007

Dhruba Charan Mishra

....

Petitioner(s)

Mr. S. Mishra,
Advocate

-versus-

Laxmi Mishra & Ors.

....

Opposite Party(s)

Dr. V. Prithivi Ray,
Advocate for O.P.1

CORAM:

JUSTICE BISWANATH RATH

ORDER

31.10.2022

Order No.

03.

1. Heard the submissions of respective parties.
2. This Writ Petition involves a challenge to the order of rejection of an application U/o.9 Rule 13 of C.P.C. seeking setting aside of the ex parte decree.
3. Considering the rival contentions of the parties and going through the reason of none appearance of the parties involved, this Court finds, though there has been assignment of reason, but the trial Court rejected such contentions only on the premises in disbelieving the medical certificate produced therein. This being the only ground in rejection of the application U/o.9 Rule 13 of C.P.C, this Court looking to the nature of suit being a partition suit, observes, it would be better, if such suit be decided in participation of all the parties concerned, even to avoid further complications in the final decree proceeding. In the interest of justice, this Court interfering in the impugned order at Annexure-3 involving M.J.C. No.9/95, sets aside the same. In the process, this Court while allowing such application,

also sets aside the ex parte decree dated 15.07.1995 in T.S. No.15/94 thereby remitting the matter to the trial court.

4. Further considering that there is sufficient delay and there is undue hardship to Opposite Parties herein for their losing the battle in setting aside of the ex parte decree enjoyed by them for years, this Court in allowing the writ petition also imposes a cost of Rs.5,000/- (rupees five thousand) to be paid to the plaintiff therein on the date of appearance of the parties i.e. on 11th November, 2022. Since the suit is of the year 1994, the suit is directed to be disposed within a period of four months thereafter.

5. The Writ Petition stands disposed of with the above observation only.

Ayaskanta Jena

