

**IN THE HIGH COURT OF ORISSA AT CUTTACK**

**CMP No. 80 of 2020**

***Biswambar @ Biswamohan Mohanty* ..... *Petitioner***

Mr. Amit Prasad Bose, Advocate

*-versus-*

***Jyoshna Madhata Pattnaik and others* .... *Opp. Parties***

Mr. Jagajit Panda, Advocate

**CORAM:**

**JUSTICE K.R. MOHAPATRA**

**ORDER**

**19.09.2022**

**Order No.**

5. 1. This matter is taken up through Hybrid mode.
2. Petitioner in this CMP seeks to assail order dated 16<sup>th</sup> December, 2019 (Annexure-1) passed by learned Senior Civil Judge, Khordha whereby he rejected an application filed by Defendant No.1 to summon one Sri Akshya Kumar Mangaraj, son of late Gunanidhi Mangaraj of village Kadalibari, Daleiput, Khordha as a witness on his behalf.
3. Mr. Bose, learned counsel for the Petitioner submits that the suit has been filed for partition and for declaration that the registered relinquishment deed dated 28<sup>th</sup> October, 2016 is a fraudulent document. During examination of witnesses on behalf of Defendants, the Defendant No.1 filed an application on 27<sup>th</sup> November, 2019 to summon the attesting witness, namely, Sri Akshya Kumar Mangaraj. It is submitted that the attesting witness can throw light on the genuineness of the execution of the relinquishment deed, more particularly when the Plaintiffs allege that the deed of relinquishment has been registered in the

guise of a Power of Attorney. The said attesting witness acted on behalf of the Plaintiffs. Thus, it is not possible on their part to produce him in Court for examination. Hence, the aforesaid application was filed. Learned trial Court, by misconstruing the matter and by misreading law held that it is the duty of the parties to lead their evidence on their behalf, as a witness can be summoned when it is required for clarification of any doubt raised in the mind of the Court. It is further held that during hearing of the suit, the Court is not supposed to issue summons to any party as per desire of the party. He, therefore, prays for setting aside the impugned order and to issue summons to the attesting witness, namely, Sri Akshya Kumar Mangaraj to be examined on behalf of the Defendants.

4. Mr. Panda, learned counsel for contesting Opposite Party Nos.1 to 3 (Plaintiffs before learned trial Court) submits that Defendant Nos.1 and 2 by playing fraud on the Plaintiffs (Opposite Parties herein) have obtained the deed of relinquishment. Thus, said Sri Akshya Kumar Mangaraj cannot be said to have acted on behalf of the Plaintiffs. Further, the Plaintiffs have to prove their case. Failure on their part will not prejudice the Defendants in any manner. In the meantime, witnesses on behalf of the Defendants have already been examined and the suit is posted for argument. It is also submitted that there is no material on record to show that said Sri Akshya Kumar Mangaraj was an attesting witness to the deed of relinquishment. After closure of the evidence, the suit is at present posted for argument. Thus, summoning a witness at this

stage may not be proper. Hence, he prays for dismissal of the CMP.

5. Considering the submissions made by learned counsel for the parties and on perusal of record, this Court is of the considered opinion that Plaintiffs have to prove their case and failure on their part may lead to end in dismissal of the suit. Further, the registered document attaches a presumption of genuineness with it unless it is proved otherwise. Thus, burden of proof is on the Plaintiffs to prove their case. Although it is stated by the Defendants in the petition that said Sri Akshya Kumar Mangaraj being an attesting witness is required to be examined, but he having acted on behalf of the Plaintiffs, cannot be produced by the Defendants. Hence, he should be summoned to be examined on behalf of the Defendants. But, Plaintiffs dispute the same stating that there is no material on record to come to a conclusion that Sri Akshya Kumar Mangaraj was an attesting witness to the relinquishment deed in question.

6. In view of the rival contentions of the parties, this Court feels that when the Plaintiffs, on whom burden of proof of the genuineness of the said deed lies, does not prefer to examine said Sri Akshya Kumar Mangaraj, there is no justification for the Defendant No.1 to summon the said witness to be examined on behalf of the Defendants. Further, the suit is at the stage of argument.

7. Hence, this Court disposes of the CMP without interfering with the impugned order. Accordingly, the CMP is

disposed of with an observation that learned trial Court shall make an endeavour for early disposal of the suit in accordance with law and the parties are directed to cooperate learned trial Court in such regard.

8. Interim order dated 16<sup>th</sup> July, 2020 passed in IA No.89 of 2020 stands vacated.

Issue urgent certified copy of the order on proper application.



**(K.R. Mohapatra)**  
**Judge**

*s.s.satapathy*