

IN THE HIGH COURT OF ORISSA AT CUTTACK

CMP NO.91 OF 2022

Sanatan Sahu & ors.

....

Petitioners

Mr.D.K.Sahoo, Adv.

-versus-

Sita Sahoo & ors.

....

Opposite Party(s)

Mr.A.P.Bose, Adv. for O.P.1

**CORAM:
JUSTICE BISWANATH RATH**

**ORDER
29.3.2022**

**Order
No.**

7.

1. Heard learned counsel for the Parties.
2. This matter involves allowing an Application under Order 39 Rule 7 of C.P.C. by the trial court moved at the instance of the Plaintiff undisputedly during pendency of the Application under Order 39 Rules 1 & 2 and further undisputedly in continuance of the order of status quo in favour of the Plaintiff.
3. Assailing the impugned order, Mr.D.K.Sahoo, learned counsel for the Petitioners reading together with the schedule of suit property and the Schedule involving the Application under Order 39 Rules 1 & 2 of C.P.C. contended that the properties involving requirement of identification at the instance of the Plaintiff remaining the suit property and the scope available for such exercise

in exercise of power under Order 26 Rule 9 of C.P.C., no such exercise is permissible in exercise of power under Order 39 Rule 7 of C.P.C. Mr. Sahoo further urged, in the event such exercise is made following the impugned order, it will sub-serve attempt of the Plaintiff in collecting evidence involving the suit ahead of trial, which is not permissible in the eye of law.

4. Mr.A.P.Bose, learned counsel for O.P.1-Plaintiff in his move to the opposition of the present Petitioner and in support of the impugned order, taking this Court to the plea in the Order 39 Rules 1 & 2 of C.P.C. Application and further in the Order 39 Rule 7 of C.P.C. Application contended that the contingency requiring brining certain information on Record arose in view of the complaint disclosed in the Application under Order 39 Rules 1 & 2 of C.P.C. as well as Order 39 Rule 7 of C.P.C. Application. It is claimed that failure of such exercise may stand on the way of effective adjudication of the Order 39 Rules 1 & 2 of C.P.C. Application. Reading through the prayer in the Plaint and the request involved in the Order 39 Rules 1 & 2 of C.P.C. Application, Mr.Bose attempted to submit that there is serious need in obtaining of a Commissioner's Report while considering the Application under Order 39 Rules 1 & 2 of C.P.C. Application. It is in the above grounds, Mr. Bose attempted to justify the impugned order.

5. Considering the rival contentions of the Parties, this Court takes note here the Plaint Prayer and the Plaint Schedule at Pages-18 & 19 of the Brief, which read as follows :-

“(a) Let a decree be passed against the main defendants directing them to register sale deed in favour of plaintiff in respect of schedule of property after removing all hurdles of E-Registration.

(b) Let the main defendant permanently restrained from entering into any agreement or sale of the suit property to any others then the plaintiff till contract with defendants is performed.

(c) That, after decree in the event the defendants do not execute register sale deed in favour of plaintiff the same be done by this court.

(d) Let mandatory injunction order be issued against the defendants to remove hurdle of E-Registration within schedule of time.

(e) That, the cost of the suit, advocate fees etc. be decreed in favour of plaintiffs.

(f) That, any other relief to which plaintiff found entitled be decreed in her favour.”

“SCHEDULE OF PROPERTY

Balasore Collectorate & S.R., P.S.-Balasore Town No.11, Mouza-Jadpur, M.S. Khata No.73, Plot No.1027-Homestead land Ac.0.060 decs. out of which eastern side Ac.0.030 decs. bounded as North-Plot No.1029, South-Plot No.1354, East-Plot No.1035, West-Rest land, M.S. Khata No.235, Plot No.1026, Homestead land, Ac.0.32 decs. out of which Eastern side A0.16 decs. Bounded as North-Plot No.1354, South-P.W.D., East-Plot No.1035, West-Rest land.

Same Khata, Plot No.1026/1354 Ac.0.088 decs. decs. out of which Eastern side Ac0.044 decs. bounded as North-Plot

No.1027, South-Plot No.1026, East-Plot No.1035, West-Plot No.955, All total Ac.0.090 decs.”

It is at this stage of the matter, this Court also takes note of the Schedule of property brought in the Application under Order 39 Rule 7 of C.P.C. Application at Annexure-2 of the Brief under the heading, “Schedule Questionnaire”. Reading together with the Schedule indicated in the Plaint and the Schedule of Questionnaire and the pleadings through Paragraph-6 of the Application involved therein, this Court first of all observes, there is no Schedule-A property at all in the disclosure at Schedule in the Plaint. It is not known how the Court entertained such Application based on Schedule-A property. Further looking to the submissions of both Parties undisputedly there is already operation of status quo order. In disposal of the Application under Order 39 Rule 3 of C.P.C. by the trial court not being challenged again. For there is a status quo order looking to the Questionnaire required to be answered through the Commissioner, there should not be continuance of construction and in the event there is construction still continuing, nothing prevented the Plaintiff to bring appropriate Application under the provision of the Civil Procedure Code. Be that as it may, for the disclosures through both the Schedules of property involving both the Plaint as well as the Application under Order 39 Rule 7 of C.P.C., this Court

not only finds, there is attempt of an enquiry involving the whole suit property under the Schedule appended therein well ahead of trial but the Petitioner in such Application wanted to ascertain the construction going on or not and also to ascertain the length, breadth, height and nature of such construction with preparation of a map, which is not the subject matter even looking to the claim in the Interim Application involved. It is at this stage also taking into consideration the decision of the Hon'ble apex Court in ***Rahul S Shah vrs. Jinendra Kumar Gandhi & ors.*** reported in (2021) 6 SCC 418. This Court finds, through the direction of the Hon'ble apex Court, the decision has gone even to the extent of procuring the Commissioner's Report. It is at this stage of the matter, this Court since finds enquiry also involved the disputed property involving the suit, such exercise by way of entertaining Application under Order 39 Rule 7 of CPC is not available. This Court observes, in the event the Petitioner finds there is further construction over the disputed property, he is to find other avenue available.

6. In the process, this Court finds, the impugned order is not sustainable in the eye of law. This Court accordingly interfering with the impugned order at Annexure-4 sets aside the same. Any further Application moved finding inconvenience in spite of the status quo

order shall be considered on its own merit and without being influenced by the observation herein above.

7. The CMP stands disposed of accordingly.

(Biswanath Rath)
Judge

M.K.Rout

