

IN THE HIGH COURT OF ORISSA AT CUTTACK

CMP No. 132 of 2020

M/s Devabrata Homes Pvt. Ltd. ***Petitioners***
Mr. Devavrat Devesh, Advocate

-versus-

Goutam Nanda @ Kar and others ***Opp. Parties***
Mr. N.C. Rout, Advocate
(For Opposite Party Nos. 1 to 9)

CORAM:
JUSTICE K.R. MOHAPATRA

ORDER

05.09.2022

Order No.

4. 1. This matter is taken up through Hybrid mode.
2. Mr. Devesh, learned counsel, taking consent of previous counsel, files Vakalatnama on behalf of the Petitioner, which is taken on record.
3. Although the matter is listed for extension of interim order dated 19th February, 2020 passed in IA No.134 of 2020, on consent of learned counsel for the parties, the CMP is taken up for final disposal.
4. Petitioner in this writ petition seeks to assail the order dated 20th January, 2020 (Annexure-8) passed by learned 2nd Additional Civil Judge (Senior Division), Bhubaneswar in CS No.8503 of 2014, whereby he rejected an application filed by Petitioner/Defendant No.4 under Order VII Rule 11 CPC.
5. Mr. Devesh, learned counsel for the Petitioner submits that the suit has been filed for the following reliefs:-

“.... to pass a preliminary decree for partition of the suit property by mates and bound and to allot the specific property between Plaintiffs and Proforma Defedant No.5 as per their respective share, failing which survey knowing

commissioner be appointed to divide the suit property by metes and bound;

AND further declare the sale deed executed by Natabara Bhoi himself in favour of Purna Chandra Nayak bearing Deed No.3451 dt.2.5.78 is void and not binding on the Plaintiffs and Pro. Defendant No.5 for the want of the title of Natabara Bhoi and others. So all subsequent transaction are also void;

AND further be pleased to recover the possession of the land from the Defendant No.1 to 4 in favour of the Plaintiffs and Pro. Defendant No.5;

AND further pleased to restrain the Defendants No.1 to 4 to coming upon the suit land and raising construction or alienation over the property;

AND cost of the suit be decreed in favour of the Plaintiffs;

AND any other relief/reliefs deemed fit for the Plaintiffs and allowed;

AND for such kind act the Plaintiffs shall ever pray.”

Admittedly, an apartment constructed by Defendant No.4 is standing over the suit land. Hence, the suit was required to be valued as per the market value of the property in question and *ad valorem* court fees in terms of 7(v)(e) of the Court Fees Act is required to be paid.

5.1 It is his contention that the suit is grossly under-valued and the Plaintiffs have only paid court fee of Rs.3,070/-. Learned trial Court did not take this material aspect into consideration and passed the impugned order. Hence, this CMP has been filed.

6. Mr. Rout, learned counsel for Opposite Party Nos.1 to 9 objecting to such submission contended that the allegation of improper valuation of the suit and payment of court fee thereon can be gone into at the time of hearing of the suit, as these are mixed question of fact and law. Learned trial Court, while

adjudicating the matter, has also observed so and passed the impugned order. It is his submission that the Plaintiffs-Opposite Parties are not parties to the sale in question. Hence, they are not required to value the relief of the suit as per the market value of the property and pay the *ad valorem* court fee thereto. He, therefore prays for dismissal of the CMP.

7. Since the issue of valuation of the suit and payment of court fee is involved in the CMP, this Court, while issuing notice in the matter, directed learned State Counsel to address the Court on the issue.

7.1 Mr. Mishra, learned ASC submits that the issue raised in the present CMP cannot be adjudicated in a petition under Order VII Rule 11 CPC, as it requires assessment of evidence and appreciation of materials on record. The relief claimed does not strictly fall under the provisions of Order VII Rule 11 CPC. Further, learned trial Court has rightly observed that the allegation of improper valuation of the suit as well as payment of court fee can be taken into consideration at the time of final adjudication of the suit by framing issue to that effect. In view of the above, he prays for dismissal of the CMP.

8. Taking into consideration the submissions of learned counsel for the parties and on perusal of materials on record, it reveals that allegation of the Petitioner in the petition under Order VII Rule 11 CPC was that since an apartment has already been constructed over the land in question and the Plaintiffs pray for recovery of possession of the same, they should have valued the relief as per the market value of property and also paid the *ad valorem* court fee thereon in terms of Section 7 (v)(e) of the Court Fees Act. The issue as to whether the apartment has been

constructed over the suit land and what would be the market value of the property, are mixed question of fact and law. Thus, the same cannot be adjudicated in a petition under Order VII Rule 11 CPC. It further appears, learned trial Court while adjudicating the matter has categorically held that it would be just and proper to frame issue with regard to valuation of the suit and record finding on the same in final judgment taking note of the evidence both oral and documentary available on record. A petition under Order VII Rule 11 CPC has to be decided on consideration of averments of the plaint only. No other material can be taken into consideration for such adjudication. In the instant case, materials other than the averments made in the plaint are required for consideration to answer the objection raised by Defendant No.4-Petitioner, which is not permissible for adjudication of a petition under Order VII Rule 11 CPC. Thus, I find no infirmity in the impugned order.

9. A memo is filed by the Petitioner stating the amount of court fee required to be paid by the Plaintiffs. In view of the discussions made above, the same requires no consideration in the CMP.

10. Accordingly, the CMP stands dismissed being devoid of any merit.

11. Interim order dated 19th February, 2020 passed in IA No.134 of 2020 stands vacated.

Issue urgent certified copy of the order on proper application.

(K.R. Mohapatra)
Judge