

IN THE HIGH COURT OF ORISSA AT CUTTACK

CMP NO.146 OF 2020

Odisha Lift Irrigation Corpn. Ltd. & ors. ***Petitioners***

Mr.S.K.Rath, Adv.

-versus-

Bidyadhar Jena & ors. ***Opposite Party(s)***

Mr.T.K.Mishra, Adv. for O.Ps.1 to 3

**CORAM:
JUSTICE BISWANATH RATH**

**Order
No.**

**ORDER
27.4.2022**

4.

1. Heard learned counsel for the Parties.
2. The CMP involves a challenge to the order passed by the Lower Appellate Court in a development involving an Application under Order 39 Rules 1 & 2 of C.P.C.
3. It appears, even though the trial court directed the Parties to maintain status quo involving the disputed property, however in disposal of FAO No.22/2021, the Lower Appellate Court while recording the declaration of the O.Ps. that in the event they are permitted to go ahead with construction, there would be no claim of equity in the event there is loss to them and in the process, the Lower Appellate Court permitted Appellant No.1/Defendant No.1 to complete construction of the half-constructed house over a portion of the suit plot no.1558 specifically indicated in Paragraph-12-C, D

& E of the objection of O.P.1, more particularly, shown in red colour in the sketch map.

4. Considering the rival contentions of the Parties, this Court finds, once a construction is already undertaken to a level and a declaration is given by such Party not to claim any equity involving such construction, there is no difficulty in granting such permission but however construction, if any, should confine to the extent of permitted limit. This Court for the observation of the Lower Appellate Court finds, there is no illegality in passing the impugned order and while confirming such order, this Court observes, it becomes the responsibility of Defendant No.1 to file an affidavit before the trial court to the above fact and then to proceed with the construction. In the event Defendant No.1 has not filed such affidavit, he may be permitted to file before the trial court at least within one week and in such event, he may proceed ahead with the construction but remaining within the permission limited by the Appellate Court.

5. It is at this stage of the matter, Mr.Rath, learned counsel for the Petitioner requests this Court for targeting the suit involved herein.

6. Considering the innocuous request and as in fact, the Petitioner is likely to be affected by the interlocutory order, this

Court directs the C.S. No.292 of 2021 to be disposed of at least within a period of nine months from the date of communication of this order.

7. The CMP stands disposed of accordingly.

(Biswanath Rath)
Judge

M.K.Rout

