

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

**C.M.P. No.139 of 2022**

*Dhirendra Choudhury*

....

***Petitioner(s)***

Mr.P.K.Sahoo, Advocate

*-versus-*

*Raj Kishore Singh & Ors.*

....

***Opposite Party(s)***

Mr.S.S.Chaini, Advocate

**CORAM:  
JUSTICE BISWANATH RATH**

**ORDER**

**07.03.2022**

**Order No.**

1.

1. Heard Mr.Sahoo, learned counsel for the petitioner and Mr.Chaini, learned counsel appearing for the opposite parties through caveat petition.

2. There is no pleading at least to establish that petitioner has a right over plot No.1072 involved therein and such a cause of action being involved in the suit, there should not have been any permission to construct over plot No.1072. Pleading and submission disclose that opposite parties claim right over Plot No.1073. Undisputedly, the trial court hearing the petition under Order 39 rule 1 & 2 of the Code of Civil Procedure came to dismiss the application but, however, in the appeal, appellate authority hearing the submission of respective parties and on consideration of the material available has come to observe as follows:

“Hence keeping in view of the above discussions, I am of the view that if the respondents will be allowed to raise construction over their plot without encroaching the land of plot No.1072, it will serve the purpose better and if the respondents found encroached the land of plot No.1072 and raised construction there over and loses the original suit, then they shall not claim and equity and vacate the same by demolishing the construction at their own cost.”

**“ORDER**

The Appeal is disposed of on contest. The impugned order dated 06.9.2021 passed in I.A.No.01 of 2021 arising out of C.S.No.251 of 2021 is hereby modified to the extent as discussed above.

In the facts and circumstances, however, there is no order as to costs.

Send the copy of this Judgment along with LCR to the learned Court below forthwith.”

3. Considering the submission of Mr.Sahoo, learned counsel appearing for the petitioner and the rival contention further the observation of the appellate court, this Court finds there is clear restriction of construction in any manner over Plot No.1072. Even the trial court has gone to the extent observing that any construction permitted to be raised over other portion of land by such order in the event the defendants lose the suit ultimately they shall not claim any equity and vacate the same by demolishing the construction at their own cost. For such clarity in the order, this Court finds there is no prejudice to the plaintiff on the other hand interest of the plaintiff has been well guided by the impugned order requiring no interference in such order.

4. The Civil Miscellaneous Petition stands disposed of with the observation made hereinabove.

**(Biswanath Rath)**  
**Judge**