

IN THE HIGH COURT OF ORISSA AT CUTTACK

C.M.P. No.143 of 2022

Muktikanta Routray

....

Petitioner(s)

Mr. A.K. Panda,
Advocate

-versus-

Pravas Sahoo

....

Opposite Party(s)

None

CORAM:

JUSTICE BISWANATH RATH

ORDER

04.04.2022

Order No.

04.

1. For the report of the Registry that neither A.D. nor brief has been received back as yet, service of notice on the Opposite Party is found to be sufficient. This matter is thus decided only hearing the submission of the learned counsel for the Petitioner. This Court here records the submission of Mr. A.Ku. Panda, learned counsel for the Petitioner that for the direction of this Court, proceeding U/o.39 rule 1 & 2 is already posted to today for hearing.

2. This C.M.P. involves a challenge to the order passed in consideration of an application U/o.39 Rule 3 of C.P.C.

3. A serious allegation is made that when the Court declined to entertain the application U/o.39 Rule 3 of C.P.C. and rejected the same, it has no authority to direct the parties to maintain status quo over the disputed property. Mr. Panda, learned counsel for the Petitioner attempted to satisfy such allegation reading through the order involved.

4. Perused the impugned order. This Court finds, there is clear recording by the trial court in rejecting the application U/o.39 rule 3 of

C.P.C. In the circumstance, this Court finds, once the trial court declines the application U/o.39 rule 3 of C.P.C., any such decision if possible, is required to be passed in consideration of an application U/o.39 rule 1 & 2 of C.P.C. and not otherwise. This Court finds, the Petitioner has strength through the decision of this Court in the case of ***Meena Kumari Bhagat Vrs. Smt. Kuntala Nayak & Ors.*** as reported in 2016 (2) OLR 246.

This Court, in the circumstance, interfering in the order dated 10.01.2022 passed by the learned Senior Civil Judge, Kunjanga in I.A. No.9 of 2022 (arising out of C.S. No.13/2022), sets aside the same.

5. The C.M.P. stands disposed of with the above direction.

(***Biswanath Rath***)
Judge

