

IN THE HIGH COURT OF ORISSA AT CUTTACK

C.M.P. No.263 of 2022

Ganesh Chandra Mohapatra

....

Petitioner(s)

Mr. S.K. Nayak,
Advocate

-versus-

Ananda Mohapatra & Anr.

....

Opposite Party(s)

CORAM:

JUSTICE BISWANATH RATH

ORDER

05.04.2022

Order No.

01.

1. This petition involves allowing of an application U/o.39 rule 4 of C.P.C by the lower appellate court but however, with certain conditions indicated therein.

2. Even though Mr. Nayak, learned counsel for Petitioner stated that there was no change in the situation requiring moving an application U/o.39 Rule 4 of C.P.C., however going through the impugned order of the trial court involving an application U/o.39 rule 4 of C.P.C at the original stage, this Court finds, the trial court has recorded the objection of the plaintiff that in the continuance of the order of status quo the defendant has already proceeded with the construction. In this situation this Court finds, for the stand of the Petitioner that there was no change in the situation, thus inviting application U/o.39 rule 4 of C.P.C. is not sustainable, further looking to the grounds and the decision of the lower appellate court, this Court here taking into account the objection of the Petitioner in the original court that the Opposite Party has already undertaken an exercise of

construction up to roof level and further looking to the relief sought for and dispute involving the suit, finds, the construction has already been undertaken up to a level and for the objection of the plaintiff the lower appellate court on appropriate appreciation while permitting the Opposite Parties to go ahead with the construction , has framed the following conditions :

- “i) The appellant-Petitioner (defendant No.1 in the original suit) shall furnish an undertaking in the trial Court to the effect that he shall not claim any equity and shall deliver vacant possession to the plaintiffs in the event of success of the plaintiffs, if the undertaking is not furnished, the appeal shall be deemed to be have been rejected.
- ii) No construction be made by the appellant – Petitioner on the verandah except casting of roof and finishing work of the said half construction house.
- iii) Both the parties to the I.A. are directed to maintain status quo in respect of the disputed suit land except the roof casting and finishing work of the half constructed building being undertaken by the appellant-petitioner till disposal of the Civil Suit No.56 of 2021 pending in the Court of the learned Civil Judge (Senior Division), Bhadrak.”

3. For the Petitioner being fully protected for the conditions imposed in the order involving the application U/o.39 rule 4 of C.P.C, this Court finds no scope to entertain the present C.M.P. The effect of the order of the lower appellate court shall, however, be subject to the Opposite Parties’ filing an affidavit undertaking therein that they will not claim any equity for the construction to be undertaken and also shall give vacant land involving the disputed property, if he loses in the suit.

4. The C.M.P. stands disposed of.

(Biswanath Rath)
Judge