

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.25241 of 2013

Guna Alis Gunadhar Nayak ***Petitioner(s)***
Mr. D. Mohapatra,
Advocate

-versus-

Sabita Nayak Alias Mohapatra & Anr. ***Opposite Party(s)***
Mr. R.B. Mishra,
Advocate for O.P.1

CORAM:
JUSTICE BISWANATH RATH

ORDER
16.05.2022

Order No.

6. 1. This matter involves rejection of an application U/o.9 Rule 13 of C.P.C. by the original court and thereafter the appeal also appears to have been dismissed.
2. Taking this Court to the grounds taken in the rejection of the application U/o.9 Rule 13 of C.P.C. Mr. Mohapatra, learned counsel for the Petitioner disclosing the date of events contended that the defendant herein was set *ex parte* on 17.07.2003, further the *ex parte* judgment was passed on 8.11.2005 and Order 9 Rule 13 application was brought on record on 6.07.2006. Taking this Court to the provision at Order 9 Rule 13 of C.P.C. Mr. Mohapatra, learned counsel for the Petitioner submitted that the legal provision prescribes 30 (thirty) days' time for bringing the application U/o.9 Rule 13 of C.P.C. and there is maximum seven months delay in bringing such application. Looking to the *ex parte* judgement came to be passed on 8.11.2005 Mr. Mohapatra, learned counsel submitted that even assuming that the Petitioner fails on medical account, but

looking to the nature of the suit directing for decree for specific performance of contract and keeping in view the development taken place in the meantime involving the disputed property already transferred to 3rd party within the knowledge of the plaintiff, Mr. Mohapatra, learned counsel for the Petitioner contended that in the event the decree is allowed to remain, there will be serious prejudice not only to the Plaintiff but also to the defendant and ultimately there will be multiplicity of litigation for there is involvement of 3rd party interested therein.

It is, in the above circumstance, Mr. Mohapatra, learned counsel for the Petitioner submitted that both the Courts below have failed in exercising the judicious mind involving such dispute and urged this Court for interfering in both the orders and if necessary allowing the application herein, but subject to award of cost.

3. Mr. Mishra, learned counsel for the Opposite Party No.1 in his attempt to support the impugned order submitted that for the *ex parte* order being passed in 2003 and we are now in 2022 and for taking up the matter for final disposal almost after 19 years, in the event the suit is reopened, the Petitioner will be seriously prejudiced for no fault of him in spite of his enjoyment of the *ex parte* decree. In the circumstance there is serious contest to the challenge made by the Petitioner.

4. Considering the rival contentions of the parties, this Court though finds, there is no written statement filed as of now, however pleadings disclose that the very same property has already been sold to the Opposite Party No.2 and not only that being conscious of this the Opposite Party No.2 was made a party to the suit proceeding none else than the plaintiff.

5. Considering the rival contentions of the parties and keeping in view the loss of time in between as well as the sufferings of the Plaintiff/Opposite Party for no fault of him, this Court, in the interest of justice, is of the view that there should be allowing of application and as there is definite prejudice for the loss of time to the plaintiff, appropriate cost should have been awarded. With an aim for logical end of this nature of suit, this Court finds, there is failure of application of judicious mind by both the Courts below. In the process this Court interfering in the impugned orders, sets aside the same and remits the suit to the stage dated 17.07.2003. While permitting the Petitioner-defendant to appear before the trial court along with a copy of this order and also with the written statement on 20th June, 2022, also directs, the suit will be tried afresh with full opportunity to all concerned. Further considering that there is loss of 19 years' time in the meantime, this Court keeping in view the sufferings of the plaintiff for no fault of him, awards a cost of Rs.20,000/- (rupees twenty thousand) only to be paid by the defendant to the plaintiff in the meantime or on the date of appearance before the trial court itself. The suit will be reopened subject to however the defendant's filing the written statement on the date fixed and payment of cost. Further considering that the suit is pending since 2001, this Court directs the trial court to conclude the suit vide C.S. No.235 of 2001 within a period of one year.

6. The writ petition stands disposed of with the above direction.

(Biswanath Rath)
Judge