

IN THE HIGH COURT OF ORISSA AT CUTTACK
CMP No.411 OF 2019

Prakash Chandra Swain

Petitioner

Mr. N. Behuria, Advocate

-versus-

Renubala Mishra

.... ***Opp. Party***

CORAM:
JUSTICE K.R. MOHAPATRA

ORDER
06.07.2022

Order No.

- 6.
1. This matter is taken up through hybrid mode.
 2. The Petitioner in this CMP seeks to assail the order dated 4th January, 2019 (Annexure-8) passed by learned Civil Judge (Senior Division), Athagarh in Civil Suit No.181 of 2015, whereby the report of survey knowing commissioner deputed under Order XXVI Rule 9 C.P.C. is accepted.
 3. Mr. Behuria, learned counsel for the Petitioner submits that a detailed objection to the report of survey knowing commissioner was filed by the present Petitioner on 16th October, 2017 as at Annexure-6. At paragraph-5 of the said objection, the Petitioner-Defendant has categorically stated that:-

“The Commissioner has not given the measurement and dimension of the lands of the parties. Besides no measurement has been given in respect of the neighboring tenants to workout the disputed lands.”

Mr. Behuria also refers to the cross-examination of survey knowing commissioner as at Annexure-7 in which the commissioner deposed as under:-

“I have not mentioned that length and breadth of the plot No.2103 and its surrounding plots in my report, but I have filed the map. I have not seen any document of Basudev Mishra at the time of my measurement. I have not mentioned in my report over (sic) which plot the house of Basudev situates, but the map shows this.”

He submits that learned trial Court while accepting the report of survey knowing commissioner did not at all take into consideration the objection raised by Defendant-Petitioner as well as the admission made by the Commissioner in his deposition, although the same was brought to the notice of the Court. He, therefore, prays for setting aside the impugned order.

4. On perusal of the impugned order under Annexure-8, it appears that learned trial Court has not, at all, taken into consideration the objection raised by Defendant-Petitioner while accepting the report of survey knowing commissioner. The survey knowing commissioner was deputed for inquiry and identification of Plot No.2103/3018/3258/4176 under mutation Khata No.604/1505. But from the report as well as deposition made by the survey knowing commissioner, it is apparent that he has not mentioned the length and breadth of the said plot.

5. Although the Opposite Party is represented through her learned counsel, none appears on her behalf at the time of hearing.

6. Taking into consideration the submission made by learned counsel for the Petitioner and on perusal of the impugned order under Annexure-8, it appears that learned

Civil Judge (Senior Division), Athagarh has neither considered nor answered the objection raised by the Defendant-Petitioner while accepting the report of survey knowing commissioner. If the objection raised by the Defendant-Petitioner is accepted, then the report of the survey knowing commissioner cannot be taken into consideration. In that view of the matter, the objection raised by the Defendant-Petitioner requires adjudication. It appears that learned trial Court has mechanically proceeded with the matter by accepting the report of survey knowing commissioner.

7. In view of the above, the impugned order under Annexure-8 is not sustainable in the eyes of law and the same is set aside. Accordingly, the matter is remitted back to the learned Civil Judge (Senior Division), Athagarh to reconsider the matter by taking into consideration the objection raised by the Defendant-Petitioner and other materials available on record in accordance with law giving opportunity of hearing to the parties concerned.

Urgent certified copy of this order be granted on proper application.

(K.R. Mohapatra)
Judge