

IN THE HIGH COURT OF ORISSA AT CUTTACK

C.M.P. No.289 of 2022

Minati Patra

....

Petitioner(s)

Mr. T. Nanda,
Advocate

-versus-

Anita Maharana

....

Opposite Party(s)

**CORAM:
JUSTICE BISWANATH RATH**

**ORDER
12.04.2022**

Order No.

- 01.
1. Heard the submission of Mr. Nanda, learned counsel for Petitioner involving a challenge to the order passed in an application U/o.39 rule 7 of C.P.C. during pending consideration of an application U/o.39 rule 1 & 2 of C.P.C.
 2. Mr. Nanda, learned counsel for the Petitioner taking this Court to the stage of the matter contended that for the clear pleadings in its objection to the petition U/o. 39 Rule 1 & 2 of C.P.C. that the defendant itself is undertaking construction but on its own right, there is no necessity of such exercise and further also contended that this is also no stage to seek such report as there is provision to lead evidence.
 3. Considering the submission of Mr. Nanda, learned counsel for the Petitioner and going through the application U/o.39 Rule 1 &

2 of C.P.C. vide Annexure-4, this Court finds, there is clear pleading that the defendant has forcibly encroached the disputed land and started digging over the plot involved in the suit and is further proceeding with the construction rapidly. In filing objection to the petition U/o.39 rule 1 & 2 of C.P.C., there is clear admission by the defendant as the Opposite Party therein that he is undertaking the construction with right title interest available with him over such disputed property. It is, in this view of the matter, once there is an allegation that somebody has encroached and is proceeding ahead with the construction over the disputed property and there is counter admitting the allegation of construction, this Court is of the view that there is no harm in obtaining a report to find-out who is undertaking the construction and the level of construction undertaken, for at least passing appropriate order in disposal of the injunction application.

In the circumstance, this Court finds, there is no harm in allowing the application U/o.39 Rule 7 of C.P.C. at the instance of the plaintiff. This Court, therefore, while declining to interfere in the impugned order, observes, the evidence whatever comes through such report, will only be for the purpose of consideration of the injunction application and nothing beyond that. It is, at this stage of the matter, considering the request of Mr. Nanda, learned counsel for Petitioner for targeting the petition U/o.39 rule 1 & 2 of C.P.C. this Court directs the trial court to ensure receipt of the report involved in the impugned direction at least within a period of three weeks from the date of communication of this order, if not already obtained in the meantime and dependent on the receipt of the report the petition U/o.39 Rule 1 & 2 of C.P.C shall be concluded at least within a period of one month thereafter.

4. With the aforesaid observation and direction the C.M.P. stands disposed of.

(Biswanath Rath)
Judge

Ayaskanta Jena

