

IN THE HIGH COURT OF ORISSA AT CUTTACK

C.M.P. No.686 of 2018

Mina Kumari Swain & Ors.

....

Petitioner(s)

Mr. D.K. Pradhan,
Advocate

-versus-

Akshaya Kumar Singh & Anr.

....

Opposite Party(s)

Mr. S.S. Bhuyan,
Advocate for O.Ps.1 & 2

CORAM:

JUSTICE BISWANATH RATH

ORDER

11.05.2022

Order No.

05.

1. Undisputedly this petition involves rejection of an application U/o.26 Rule 9 of C.P.C at the instance of the defendants and the stage of filing of such application is in the midst of evidence. There is no dispute at Bar that the suit is yet to involve declaration of recovery of possession.

In the circumstance, this Court here takes into account the provision at Order 26 Rule 9 of C.P.C., which reads as follows:-

“9. Commissions to make local investigations – In any suit in which the Court deems a local investigation to be requisite or proper for the purpose of elucidating any matter in dispute, or of ascertaining the market-value of any property, or the amount of any *mesne profits* or damages or annual net profits, the Court may issue a commission to such person as it thinks fit directing him to make such investigation and to report thereon to the Court :

Provided that, where the State Government has made rules as to the persons to whom such commission shall be issued, the Court shall be bound by such rules.”

2. Reading the aforesaid provision this Court finds, the term when the Court feels may direct for appointment of Commissioner, must be at a stage after completion of pleadings as well as evidence and the matter is undertaken for argument. Looking to the stage of moving of the application U/o.26 Rule 9 of C.P.C, this Court finds, the application U/o.26 rule 9 of C.P.C was premature.

In the circumstance, though this Court is not inclined to entertain the C.M.P., however, option for moving of such application is kept open to be exercised only, in the event the pleadings and evidence read together does not come to identify the question involved.

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

(Biswanath Rath)
Judge