

IN THE HIGH COURT OF ORISSA AT CUTTACK
CMP No.294 of 2022

Sri Sri Lokanath Mahaprabhu & Ors. **Petitioner(s)**
Mr. G.Mishra, Advocate

-versus-

Sri Ram Gopal Gupta **Opp.Party(s)**
Mr.B.Mohapatra,
Advocate
(Caveator)

CORAM:
JUSTICE BISWANATH RATH

ORDER
25.04.2022

Order No.

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1. Heard learned counsel appearing for the parties.
2. This Civil Miscellaneous Petition involves rejection of an application under Order 39, rule 7 of the Code of Civil Procedure in the pendency of an application under Order 39, rule 1 & 2 of the Code of Civil Procedure. Being aggrieved and hearing on behalf of the petitioner, Mr. Mishra, learned counsel appearing for the petitioner contended that for the nature of injunction required determination and report involving the question at page- 29 of the brief is very much essential. Mr.Mishra. learned counsel also referring certain decisions contended calling for report in exercise of power under Order 39, rule 7 of the Code of Civil Procedure pending adjudication of application under Order 39, rule 1 & 2 of the Code of Civil Procedure is just and appropriate and further such report has no value for the decision of the suit. It is in the circumstance, Mr.Mishra, learned counsel opposes the impugned order for not being considered taking into consideration the requirement involving the application and sought for interference in the same by this Court.
3. Mr.Mohapatra, learned counsel appearing for the Caveator- Opposite party on the other hand in support of the impugned order

contended that the plaintiff-petitioners attempt to collect information and evidence on the issue is germen to the suit and in the guise of exercise of Order 39, rule 7 of the Code of Civil Procedure in pending application under Order 39, rule 1 & 2 of the Code of Civil Procedure. There is attempt to procure evidence in the suit.

4. Considering the rival contentions of the parties, perusal of the plaint schedule and relief, this Court finds the petitioners have the following relief:

(a) the defendant be restrained permanently from dispossessing the plaintiffs from the schedule land, from interfering in the peaceful possession of the plaintiffs over the schedule land, from demolishing the idols of Sri Sri Hanuman Jew, Basua Balada and Goddess Tulasi situated over the schedule land, from causing damage to the temple of Sri Sri Lokanath Mahaprabhu and Sri Sri Panchamukhi Hanuman Jew standing over schedule land, from raising any structure or construction or house over the schedule land, and from changing the nature and character of the schedule land in any manner.”

read with following Schedule of land:

District Balasore, P.S.-Balasore Town (Hal P.S.-Sahadevkhunta) Mouza- Sahadevkhunta, M.S.Khata No.379, Plot No.435, A 0.930 decs. out of which towards North A 0.085 Bounded by: North-Private road lying over M.S.Plot No.435
South-M.S.Plot No.436 (Part)
East- Private Road lying over M.S.Plot – 435
West- M.S. Plot No.436 (Part) and 1403.”

5. It is at this stage of the matter, this Court reading through the application under Order 39, rule 1 & 2 of the Code of Civil Procedure as well as the questionnaire framed in the application under Order 39, rule 7 of the Code of Civil Procedure finds the question posed for involvement of a commission and report thereby are akin to the decision of the suit even. In the circumstance, this Court finds the opposite party is justified in his claim that petitioners attempt is to collect evidence before issues are framed even. In the above observation, reading through the impugned order, this Court finds there

is no infirmity in the impugned order in rejection of such application and such exercise will lead to collection of evidence in the suit. The rejection of this application however not stand on the way of the petitioners in getting their relief in the application under order 39, rule 1 & 2 of the Code of Civil Procedure, if necessary, giving evidence through witnesses.

6. The Civil Miscellaneous Petition stands disposed of but with the observation made hereinabove.

(Biswanath Rath)
Judge

Sks

