

**IN THE HIGH COURT OF ORISSA AT CUTTACK**

**C.M.P. No.312 of 2022**

***Dibakar Sethi***

.... ***Petitioner(s)***  
Mr. S.K. Nayak(2),  
Advocate

*-versus-*

***Satyabrata Mallick***

.... ***Opposite Party(s)***

**CORAM:  
JUSTICE BISWANATH RATH**

**ORDER  
25.04.2022**

**Order No.**

01. 1. The C.M.P. involves an order passed by the Executing Court appointing Civil Court Commissioner for execution of direction in the judgment and decree involved. For Mr. S.K. Nayak, learned counsel for the Petitioner, once there is direction to a particular effect on disposal of suit, Plaintiff has other scope to get the direction achieved and the Executing Court has role therein.
2. Looking to the judgment of the learned trial court in C.S. No.937(I) of 2015/C.S. No.11/2017, this Court finds, the trial court while partly decreeing the suit has permitted the plaintiff to get his purchased land demarcated by the Civil Court Commissioner without affecting the purchase made by the defendant. From the further development it appears, after this judgment and decree the Petitioner approached the executing court for deputing a Civil Court Commissioner for getting the demarcation direction executed.

3. Mr. Nayak, learned counsel for the Petitioner submitted that the trial court has already permitted the Petitioner for demarcation of the land involved along with deposit of the ad-valorem Court fee and since the plaintiff deposits the ad-valorem court fees, he has the automatic right of demarcation and there is no necessity of moving the executing court by the plaintiff.

It is, in the circumstance and for the Petitioner getting his order executed through the Execution Proceeding No.1 of 2022 Mr. Nayak, learned counsel for the Petitioner submitted that there is not only harassment to the defendant for unnecessarily participating in a execution proceeding, again for the plaintiff's already getting a permission from the trial court for demarcation through the Civil Court Commissioner, there is no necessity of such exercise.

4. Hearing the submission of Mr. Nayak, learned counsel for the Petitioner, this Court here records the submission of Mr. Nayak, learned counsel for the Petitioner that the defendant is not prejudiced by the judgment and decree passed in the suit and accordingly they have not filed any appeal and they are suffering only for asking them to unnecessarily attend the execution proceeding. This Court here observes, since the trial court permitted for demarcation of the disputed land through Civil Court Commissioner, for there is no provision for requisitioning the Civil Court Commissioner after the suit is finally disposed, the only provision for getting engagement of a Civil Court Commissioner; may be through the execution proceeding. In the event the defendant has nothing to participate in the execution proceeding, the defendant may be advised accordingly. This Court while finding the execution proceeding justified, observes, since the defendant does not want to participate in the execution proceeding and as he is bound by the judgment and decree of the trial court for he is not challenging

the same further, he has the responsibility to cooperate the Civil Court Commissioner being appointed by the executing court for demarcation.

In disposal of the C.M.P. without interfering in the impugned order, this Court records the statement of Mr. Nayak, learned counsel for the Petitioner that the defendant shall cooperate in the demarcation process.

5. The C.M.P stands disposed of.

**(Biswanath Rath)**  
**Judge**

*Ayaskanta Jena*

