

IN THE HIGH COURT OF ORISSA AT CUTTACK

C.M.P. No.315 of 2022

Biswajit Das @ Padhi

....

Petitioner(s)

Mr. G. Mishra,
Advocate

-versus-

Sri Sri Nrusinghanath Jew & Ors.

....

Opposite Party(s)

CORAM:

JUSTICE BISWANATH RATH

ORDER

26.04.2022

Order No.

01.

1. The dispute involved here is that in the event a document is already relied on in the plaint and if not available, for its production by the defendant involved being obstructed at least on the basis of copy of the same, there is scope of secondary evidence. There is no denial that the plaintiff has clear pleading regarding creation of a Chela Patra in favour of the defendant no.4 and at the same time the plaintiff clearly disclosed that such a Chela Patra is available only with the defendant no.4. However the defendant no.4 bringing his written statement discloses that the Chela Patra referred to in the plaint pleading has been submitted to the Endowment Commissioner and the Endowment Commissioner is to produce such document prior to commencement of trial. It is observed that in the same proceeding the Endowment Commissioner issuing letter No.6024 dated 4.07.2021 expressed its inability to produce any such document on the premises that such a document is not at all available in his Office. It is, in this background only, the trial court considering the application involved directed the

Defendant No.4 to produce the Chela Patra dated 22.05.2010 within fifteen days and at the same time also observed, failure of production of the Chela Patra dated 22.05.2010, there is scope of secondary evidence.

2. Assailing the impugned order involved Mr. Mishra, learned counsel for the Petitioner submitted that the Civil Court has straightway jumped to the conclusion of availability of otherwise scope of secondary evidence and such occasion does not arise. It is, in this view of the matter, Mr. Mishra, learned counsel for the Petitioner prayed for quashing the impugned order as available at page 33 of the brief.

3. Considering the submission of Mr. Mishra, learned counsel for the Petitioner, this Court finds, there is no dispute that there is clear pleading in the plaint that the plaintiff agreed to the fact that there is existence of such document namely Chela Patra in favour of the defendant no.4 and the defendant no.4 brings the fact of availability of such document with the Endowment Commissioner in written statement and in the process the Endowment Commissioner submitted not possessing such document. In the circumstance, it appears, there was no other scope for the trial Court than to direct the defendant no.4 to produce such document. It is, at this stage of the matter, Mr. Mishra, learned counsel for the Petitioner vehemently objecting the intimation of the Endowment Commissioner, submitted that the original document is very much available in the Office of the Endowment Commissioner. There is, however, no denial of having a copy of the Chela Patra by the defendant no.4. For the provision in the Code of Civil Procedure, assembly of documents required for the just decision of the suit prior to framing of the issues or in the worse at least prior to commencement of the trial, in the event the original is neither available

with the Endowment Commissioner nor with the defendant no.4, keeping in view the admission of the defendant no.4 that he is in possession of a copy of the Chela Patra dated 22.05.2010 with him, this Court in disposal of the C.M.P. declining to interfere in the impugned order, however permits the defendant no.4 to produce copy of the Chela Patra dated 22.05.2010 before the next date of posting and in such event if necessary, such document can be entered through secondary evidence.

4. The C.M.P. stands disposed of with the above observation and direction.

(Biswanath Rath)
Judge

Ayaskanta Jena

