

IN THE HIGH COURT OF ORISSA AT CUTTACK

CMP No. 536 OF 2014

Harihar Das

....

Petitioner

Mr. Samir Kumar Mishra, Advocate

-versus-

Jayanta Kumar Singh and others

....

Opp. Parties

Mr. Aditya Kumar Mohapatra, Advocate

(For Opp. Party Nos.1 and 10)

CORAM:

JUSTICE K.R. MOHAPATRA

ORDER

16.12.2022

Order No.

5. 1. This matter is taken up through hybrid mode.
2. The Petitioner in this CMP seeks to assail the order dated 15th April, 2014 (Annexure-5) passed by learned Civil Judge (Senior Division), Balasore in C.S. No.486 of 2013-I, whereby allowing an application under Section 10 C.P.C., he stayed further proceeding of the said suit till disposal of C.S. No.300 of 2008 and directed to put up the case record of the suit along with C.S. No.300 of 2008.
3. Mr. Mishra, learned counsel for the Petitioner submits that parties to both the suits are same. Subject matter of dispute involved in both the suits are almost similar. C.S. No.300 of 2008 has been filed by Antaryami Singh and others with a prayer for demarcation of the suit land through the Civil Court Commissioner and for permanent injunction. C.S. No. 486 of 2013 has been filed by Harihar Das (present Petitioner) for declaration of right, title and interest as well as for permanent injunction.

4. Mr. Mishra, learned counsel for the Petitioner referred to chat given in the impugned order under Annexure-5, which is reproduced herein for proper adjudication of the case:

Sl. No	Case No.	Name of the party	Property involved in dispute	Prayer
01	C.S. 300/08	Antaryami Singh and others.... Plaintiffs Vrs. Harihara Das and others...Defendants	M.S. Khata 29 of village Mansing bazaar Plot 950 Area 220 dec.	Praying for Demarcation of the suit through Civil Court Commissioner and for permanent injunction.
02	C.S. 486/2013	Harihara Das...Plaintiff Vrs. Antaryami Singh and others...Defendants	M.S. Khata 29 of village Mansing Bazar PlotNo.950 extending to an area Ac.0.03 decimals from the southern side, out of Ac.0.220 decimals.	Praying to declare his right, title, interest and permanent injunction.

5. It is his submission that by staying the further proceeding of C.S. NO. 486 of 2013, learned trial Court prevented the Petitioner to raise the issue with regard to declaration of right, title and interest while taking up C.S. No.300 of 2008. He further submits that interest of justice will be best served, if both the suits are heard simultaneously. Hence, he prays for setting aside the impugned order under Annexure-5 and for a direction to learned trial Court to take up both the suits simultaneously.

6. Mr. Mohapatra, learned counsel appearing for the Opposite Party Nos.1 and 10 submits that while adjudicating C.S. No.300 of 2008, issue with regard to right, title and interest in respect of the land in question has to be taken into consideration, as the suit has been filed for demarcation. If C.S. No. 486 of 2013 is allowed to be continued, it may operate *res judicata* to adjudicate C.S. No.300 of 2008. As such, learned trial Court has committed no error in staying further proceeding of C.S. No. 486 of 2013 till disposal of C.S. No.300 of 2008, more particularly, when learned trial Court directed to tag the case record of the present suit along with case record of C.S. No.300 of 2008, so that there cannot be any confusions.

7. Taking into consideration the submissions made by learned counsel for the parties and the details of the suit as reproduced as above, it is apparent that Hal Plot No.950 to an extent of Ac.0.220 decimals under Khata No.29 of Mansing Bazar is subject matter of dispute in C.S. No.300 of 2008, wherein, the Plaintiff, namely, Antaryami Singh and others have prayed for demarcation of the said land, whereas in C.S. No. 486 of 2013, the Plaintiff (Petitioner herein) has prayed for declaration of his right, title and interest over the Plot No.950 to an extent of Ac.0.03 decimals from the southern side out of Ac.0.220 decimals. In view of the above, simultaneous hearing of both the suits by recording one set of evidence would be just and proper to avoid confusion of judgment as well as multiplicity of litigation. Further it will also save the judicial time of the Court in adjudicating both the suits.

8. In view of the above, this Court disposes of the CMP with a direction that C.S. Nos. 300 of 2008 & 486 of 2013 shall be

heard simultaneously by recording one set of evidence. The impugned order under Annexure-5 is modified to the aforesaid extent.

9. Interim order dated 6th May, 2014 passed in Misc. Case No.492 of 2014 stands vacated.

Urgent certified copy of this order be granted on proper application.

(K.R. Mohapatra)
Judge

ms

