

IN THE HIGH COURT OF ORISSA AT CUTTACK
C.M.P. No.355 of 2022

Premananda Swain

....

Petitioner(s)
Mr.D.Tripathy, Advocate

-versus-

Bidyadhar Swain

....

Opp.Party(s)
Mr.A.Pattanayak,
Advocate

CORAM:
JUSTICE BISWANATH RATH

ORDER
04.05.2022

Order No.

1

1. Heard Mr.Tripathy, learned counsel for the petitioner and Mr.A.Pattanayak, learned counsel appearing for the opposite party prior to notice.

2. This Civil Miscellaneous Petition involves rejection of an application under Order 26, rule 9 of the Code of Civil Procedure at the instance of the plaintiff vide order date 17.03.2022. Bringing to the notice of the Court through petition under Order 26, rule 9 of the Code of Civil Procedure, on reading through paragraph-5 therein learned counsel for the plaintiff-petitioner attempted to bring to the notice of the Court the point required for determination in exercise of power under Order 26, Rule-9 of the Code of Civil Procedure. On the asking of the Court, taking to the plaint averments in paragraph-3, particularly pleading on the point required for determination by the plaintiff on the availability of a plot adjacent to the petitioner's plot being used as an access and utilizing for the purpose of repairing of the house of the plaintiff to that particular side. While satisfying such pleading available in paragraph-3, the plaintiff at the same time through the response of the defendant through paragraph-16 in the written statement claimed there is contingency in allowing the application under Order 26, rule 9 of C.P.C. A joint reading of paragraph-3 and the averments, the response of the

defendant in paragraph-16 and the question required for determination with paragraph-5 of the application under Order 26, rule 9 of the Code of Civil Procedure, this Court finds, there is no denial by the defendant involved to the claim of the plaintiff in paragraph-3 particularly in the use of adjacent vacant land by the defendant. In such contingency, this Court finds there is no requirement for calling for a report. As a consequence, this Court finds the application so filed was itself mechanical. In this circumstance, this Court does not like to also interfere in the impugned order. Consequently, the Civil Miscellaneous Petition stands dismissed.

Sks



(Biswanath Rath)
Judge