

IN THE HIGH COURT OF ORISSA AT CUTTACK

CMP No. 374 OF 2022

Sushanta Mohapatra and others* *Petitioners

Mr. Santosh Kumar Dwivedy, Advocate

-versus-

Prashanta Kumar Mohapatra* *Opp. Party

CORAM:

JUSTICE K.R. MOHAPATRA

ORDER

25.07.2022

Order No.

3. 1. This matter is taken up through Hybrid mode.
2. Petitioners in this CMP seek to assail the order dated 23rd April, 2022 (Annexure-1) passed by learned Civil Judge (Junior Division), Soro in CS No.85 of 2022-I, whereby he directed the parties to maintain status quo till filing of the objection by the present Petitioner.
3. It is the submission of Mr. Dwivedy, learned counsel that CS No.85 of 2022-I has been filed for partition. Although the Petitioners/Defendants had filed caveat petition, but without considering the same an order of status quo was passed exercising power under Order XXXIX Rule 3 CPC. When the Petitioners came to know about the same, they appeared and on their request the matter was taken up on 16 April, 2022. Learned trial Court, taking into consideration that the Petitioners being the Caveators, were not given opportunity of hearing, recalled the order of *status quo* dated 11th April, 2022 exercising inherent power under Section 151 CPC. Thereafter, the matter was posted to 18th April, 2022 on which date an

application for time was made. The Petitioners, however entered appearance on 22nd April, 2022 and the matter was posted to 23rd April, 2022 on which date the Petitioners prayed for an adjournment to file objection. Rejecting such application, learned trial Court again restored the order of *status quo*.

3.1 Mr. Dwivedy, learned counsel further submits that he has no instruction as to whether the present Petitioners have already filed objection to the petition filed under Order XXXIX Rules 1 and 2 CPC or not. However, without providing them opportunity to file objection to the petition under Order XXXIX Rules 1 and 2 CPC, the order of *status quo* could not have been restored. Hence, he prays for setting aside of impugned order dated 23rd April, 2022 passed in IA No.32 of 2022, which was passed without giving them opportunity to contest the petition under Order XXXIX Rules 1 and 2 CPC.

4. Taking into consideration the submission made by learned counsel for the Petitioners, this Court finds that the suit is filed for partition. The defendants stated to have made some construction over the suit schedule property. By virtue of the order of *status quo* the construction stated to be made by the Petitioners is held up.

5. In view of the above, this Court without expressing any opinion on the merit of the case of either parties, feels that the Petitioners should be given an opportunity to contest the IA No.32 of 2022 by filing their objection. Accordingly, this Court directs in the event Petitioners files their objection within seven days hence along with certified copy of this order serving copy of the same on the Plaintiffs/Opposite Parties, learned trial

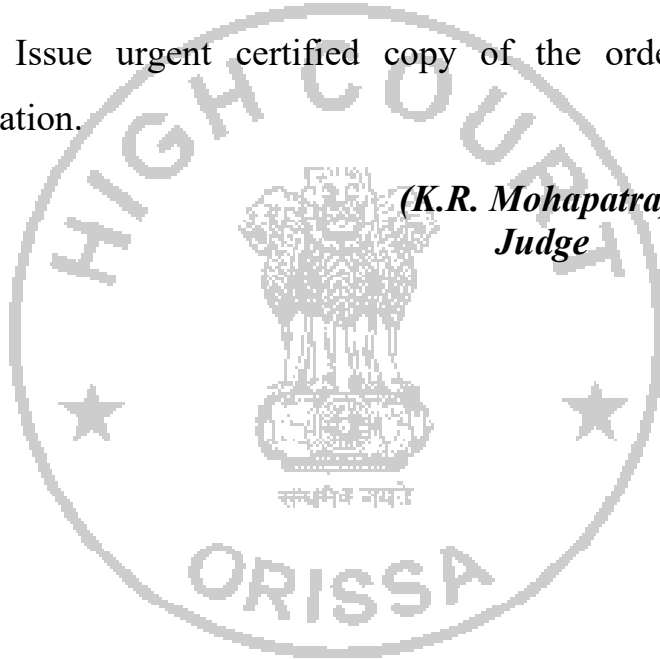
Court shall do well to consider the IA No.32 of 2022 filed under Order XXXIX Rules 1 and 2 CPC, as expeditiously as possible, but not later than 15 days therefrom giving opportunity of hearing to the parties concerned.

5.1 It is made clear that this Court has not expressed any opinion on the sustainability of order of *status quo* passed by the learned Civil Judge (Junior Division), Soro.

6. With the observation and direction, as aforesaid, the CMP stands disposed of.

Issue urgent certified copy of the order on proper application.

(K.R. Mohapatra)
Judge



s.s.satapathy