

IN THE HIGH COURT OF ORISSA AT CUTTACK

CMP NO. 612 OF 2019

Achyutananda Nayak and another* *Petitioners
Mr. S.S.K. Nayak, Advocate
-versus-
Sanatan Nayak* *Opp. Parties
Mr. Ajit Kumar Tripathy, Advocate

**CORAM:
JUSTICE K.R. MOHAPATRA**

**ORDER
19.12.2022**

Order No.

4. 1. This matter is taken up through hybrid mode.
2. The Petitioners in this CMP seeks to assail the order dated 20th April, 2019 (Annexure-9) passed in FAO No. 90 of 2018, whereby by learned District Judge, Bhadrak set aside the order dated 12th September, 2018 (Annexure-6) passed by learned Civil Judge (Senior Division), Bhadrak in CMA No.344 of 2018 (arising out of C.S. No. 228 of 2018) permitting the Petitioners to make construction over the suit land.
3. Mr. Tripathy, learned counsel for the Opposite Party submits that CMA No. 344 of 2018 has been filed under Order XXXIX Rule 4 C.P.C. for variation of the *ex-parte* ad interim order of injunction passed in I.A. No. 269 of 2018 filed under Order XXXIX Rules 1 and 2 C.P.C. The said I.A. No.269 of 2018 has already been disposed of in the meantime. Hence, this CMP which arises out of CMA No.344 of 2018 has become infructuous.
4. Mr. Nayak, learned counsel for the Petitioners although concedes to the factual position, but submits that the order

passed in CMA No.344 of 2018 is for completion of construction and only plastering of the house is to be made, which is seriously disputed by Mr. Tripathy, learned counsel for Opposite Party.

5. Since I.A. No. 269 of 2018 has already been disposed of in the meantime, any order passed in CMA No.344 of 2018, which arose from the said I.A. has already been merged with the same. Accordingly, the CMP which arises out of an order passed in CMA No.344 of 2018 has become infructuous.

6. Accordingly, the CMP is disposed of with an observation that the Petitioners, if so advised, may work out their remedy under law.

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

(K.R. Mohapatra)
Judge

bks

