

IN THE HIGH COURT OF ORISSA AT CUTTACK

C.M.P. No.417 of 2022

Chandrakanti Sahoo.

....

Petitioner(s)

Mr.B.Pujari,
Advocate

-versus-

Akshaya Behera & Anr.

....

Opposite Party(s)

**CORAM:
JUSTICE BISWANATH RATH**

**ORDER
12.05.2022**

Order No.

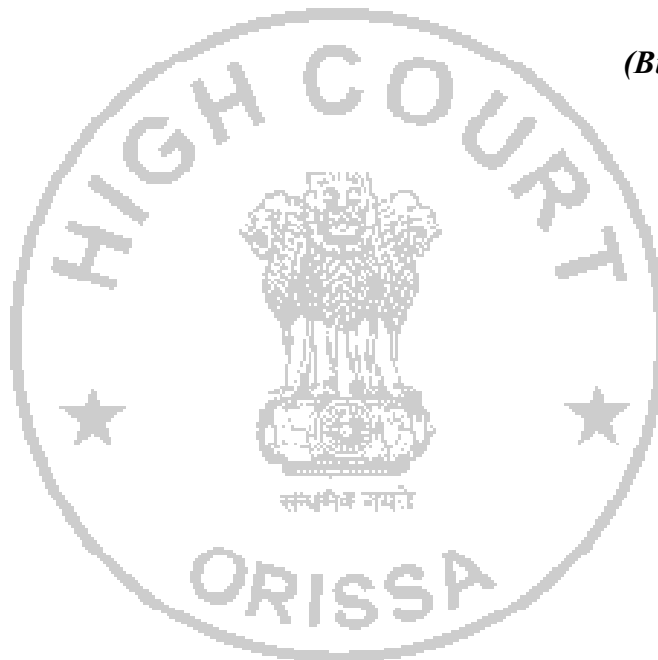
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1. Heard Mr.Pujari, learned counsel appearing for the petitioner.
2. This Civil Miscellaneous Petition involves an allegation of no timely conclusion of the application under Order 39, rule 1 & 2 of the Code of Civil Procedure by the trial court even after service involving such proceeding comes to complete. It is further alleged that there has been unnecessary adjournment of the matter in the result the plaintiff-petitioner is seriously prejudiced. It is also brought to the notice of the Court that in the meantime attempt of the petitioner through application under Order 39, rule 3 of the Code of Civil Procedure has been rejected.
3. Considering there has been already rejection of application under Order 39, rule 3 of the Code of Civil Procedure, this Court finds there should be early disposal of the application under Order 39, rule 1 & 2 of the Code of Civil Procedure for at least preventing the plaintiff to face any further litigation involving the disputed property. This Court records the submission of learned counsel for the petitioner that though notice in application under Order 39, Rule 1 & 2 of the Code of Civil Procedure has been served on the contesting opposite parties but for the direction of the trial court, service affidavit will be filed. It is observed,

if ultimately the trial court finds there is sufficiency in service of notice and there is no appearance of the contesting opposite parties, even after service of notice, the petition under Order 39, rule 1 & 2 be disposed of within two weeks. Further, if there is no proper service of notice on such party may be made through special messenger at the cost of the plaintiff before the finality of the application under Order 39, rule 1 & 2 of the Code of Civil Procedure in this situation at least within three weeks of service of copy of this order.

5. The Civil Miscellaneous Petition stands disposed of with the observation and direction made hereinabove.

(Biswanath Rath)
Judge



Sks