

IN THE HIGH COURT OF ORISSA AT CUTTACK

C.M.P. No.432 of 2022

Purna Chandra Prajapati

....

Petitioner(s)

Mr. S.D. Das,
Sr. Adv. being assisted by
Mr. M.M. Swain,
Advocate

-versus-

State of Odisha & Ors.

....

Opposite Party(s)

CORAM:

JUSTICE BISWANATH RATH

ORDER

19.05.2022

Order No.

01. 1. Undisputedly there has been disposal of a Second Appeal decreeing in favour of the Petitioner. The judgment in the Second Appeal reads as follows :-

“14. Accordingly, this Appeal stands disposed of with the following order:-

“The suit be and the same is decreed declaring the right, title and interest of the Plaintiffs over the suit land.

Mandatory injunction is hereby issued in favour of the Plaintiffs and against the Defendants who are directed to demolish their unauthorized construction over the suit land and deliver vacant possession of the same to the Plaintiffs within three months hence at their own cost failing which the Plaintiffs would be at liberty to recourse the same through court as the cost recoverable from the Defendants.

Permanent injunction is hereby issued in favour of the Defendants and against the Plaintiffs restraining them from interfering with the user of the land under Plot No.344 (Gharoi Rasta) as passage/pathway/approach of the Defendants from coming over the main public road from their land and house over plot No.346 and in case of any such obstruction/ infringement/construction by the plaintiffs over that land under plot No. 344 in the user of the same as above by the Defendants; mandatory injunction is issued

against those Defendants to remove those within a month hence at their own cost failing which the Defendants can restore the status of that land as 'Gharoi Rasta' for their user as above through the court by way of execution at the cost recoverable from the Plaintiffs.

No order as to cost in this Appeal is passed."

2. In undertaking the execution exercise the Petitioner appears to have brought an application U/s.151 of C.P.C. seeking a direction from the Executing Court to undertake an exercise involving an application U/s.151 of C.P.C and thereby directing for provision for water connection and electricity connection to the Petitioner's house.

Such application having been rejected the present C.M.P. is filed.

3. Considering the submission of Mr. Das, learned Sr. Advocate appearing on behalf of the Petitioner that the Petitioner is in bad need of electricity and water supply connection, but however, reading through the direction part in disposal of the Second Appeal vide RSA No.45 of 2013, this Court finds, the application U/s.151 of C.P.C has nothing to do with the *lis.* involved in the suit presently involving the execution of the judgment in the disposed of Second Appeal.

In the circumstance, this Court finds, there is no room for filing the Section 151 of C.P.C. application. While this Court declines to entertain the C.M.P., however observes, if the Petitioner has any other remedy, may avail the same. Considering the request for expediting the execution proceeding, this Court directs the trial court to conclude the execution proceeding within a period of three months from the date of communication of an authenticated copy of this order by the Petitioner.

4. The C.M.P. stands disposed of with the above direction.

(Biswanath Rath)
Judge