

IN THE HIGH COURT OF ORISSA AT CUTTACK

CMP No. 451 of 2022

Jayanti Das

.....

Petitioner

Mr. Dwarika Prasad Mohanty, Advocate

-versus-

Sri Manas Kumar Nayak and another

....

Opp. Parties

CORAM:

JUSTICE K.R. MOHAPATRA

ORDER

23.06.2022

Order No.

1. This matter is taken up through Hybrid mode.
2. Petitioner in this CMP seeks to assail the order dated 11th May, 2022 (Annexure-4) passed in IA No.171/226 of 2022 arising out of CS No.405/483 of 2020, whereby learned Senior Civil Judge, Balasore refused to entertain an application under Order XXXIX Rule 3 CPC for dispensing with service of notice to the Defendants/Opposite Parties to take up the aforesaid IA.
3. It is submitted by learned counsel for the Petitioner that the suit has been filed for declaration that the compromise decree passed in CS No.957 of 1997 (I) is not binding on the Petitioner and for consequential relief. During pendency of the suit, Defendants/Opposite Parties, without entering appearance, made an attempt to alienate the property which constrained the Petitioner to file IA No.171/226 of 2022 under Order XXXIX Rules 1 and 2 CPC. Along with the IA, the Plaintiff/Petitioner

also filed an application under Order XXXIX Rule 3 CPC to dispense with service of notice on the Opposite parties and to take up IA No.171/226 of 2022 for consideration. Learned Civil Judge, without considering the urgency in the matter, dismissed the said petition by holding that no urgency is involved in the IA for injunction. It is submitted by learned counsel for the Petitioner that the IA is next posted to 27th June, 2022. Hence, a direction may be issued to consider and dispose of the IA for injunction on the same date subject to service of notice on the Opposite Parties.

4. Taking into consideration the submission made by learned counsel for the Petitioner, this Court is of the considered opinion that since the learned trial Court has directed to issue notice to the Opposite Parties in the IA, it should take steps for early disposal of the petition subject to service of notice on the Defendants/ Opposite Parties.

4.1 It is, therefore, directed that if the notice is served on the Defendants/Opposite Parties in the meantime, learned trial Court in IA No.171/226 of 2022, shall do well to take up the matter on the date fixed. If it is not possible on the part of the learned trial Court to dispose of the application on the same day, endeavour shall be made to dispose of the same, as expeditiously as possible, but not later than ten days thereafter.

5. In the event, notice is not served on the Opposite Parties, the Petitioner is at liberty to file an application to take out notice by special messenger and in that event, such prayer shall be allowed and on service of notice on the Opposite Parties, learned trial

Court shall do well to consider the IA as expeditiously as possible, preferably within ten days thereafter giving opportunity of hearing the parties concerned.

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

Issue urgent certified copy of the order on proper application.

(K.R. Mohapatra)
Judge



s.s.satapathy