

IN THE HIGH COURT OF ORISSA AT CUTTACK
CMP NO. 511 OF 2022

Elizabeth Behera ***Petitioner***

Mr. Pabitra Kumar Nayak, Advocate

-versus-

State of Odisha & Others ***Opp. Parties***

Mr. Dillip Kumar Mishra,
Additional Government Advocate

CORAM
JUSTICE K.R. MOHAPATRA

ORDER
07.06.2022

Order No.

01. 1. This matter is taken up through hybrid mode.
2. This CMP has been filed assailing the order dated 17th May, 2022 passed by learned Civil Judge (Senior Division), Bhubaneswar in I.A. No. 01 of 2022 (arising out of C.S. No. 1223 of 2022), whereby he refused to grant *ad-interim* order of injunction by rejecting an application under Order XXXIX Rule 3 C.P.C.
3. Mr. Nayak, learned counsel for the Petitioner submits that along with the plaint in C.S. No. 1223 of 2022, the Plaintiff-Petitioner filed a petition under Order XXXIX Rules 1 and 2 read with Section 151 C.P.C. praying, inter alia, to restrain the Opposite Parties from making any construction over Schedule 'A' property and changing the nature and character of the same during pendency of the suit. As the Opposite Parties are contemplating to make construction over Schedule 'A' property, he also filed an application under Order XXXIX Rule 3 C.P.C. to take up the I.A. No.01 of 2022 by dispensing with service of notice on the Opposite Parties. Learned Civil Judge

(Senior Division), Bhubaneswar without considering the materials on record and the purpose for which the petition under Order XXXIX Rule 3 C.P.C. was moved rejected the same without assigning any valid reason thereto. In that view of the matter, the impugned order is not sustainable. He, therefore, prays for setting aside the impugned order and for a direction to pass ad-interim order of injunction till the petition under Order XXXIX Rules 1 and 2 C.P.C. is taken up.

4. Mr. Mishra, learned Additional Government Advocate submits that since the Defendants-Opposite Parties to the I.A. No.01 of 2022 are officials of the State Government, the Government Pleaders/Additional Government Pleaders attached to the Court may receive the notice and contest the I.A. by filing their show cause. Thus, there was no reason as to why a petition under Order XXXIX Rule 3 C.P.C. should have been entertained.

5. Taking into the submission made by learned for the parties and that the Opposite Parties to the I.A. No.01 of 22 are Government officials, this CMP is disposed of with a direction that on service of notice of I.A. No.01 of 2022 on the learned Government Pleader/Additional Government Pleader attached to the said Court within a period of seven days hence, learned Civil Judge (Senior Division), Bhubaneswar shall do well to take up the I.A. No. 01 of 2022 on or before 21st June, 2022 to which the matter is fixed and make an endeavour for disposal of the I.A. on the same day and if it is not possible to dispose of I.A. No.01 of 2022 on the same day, learned Civil Judge (Senior Division), Bhubaneswar shall do well to consider and dispose of IA. No.1 of 2022 as expeditiously as possible

preferably within a period of seven days thereafter, giving opportunity of hearing to the parties concerned.

6. A copy of this order shall be supplied to Mr. Mishra, learned Additional Government Advocate for information and compliance.

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

(K.R. Mohapatra)
Vacation Judge

bks

