

IN THE HIGH COURT OF ORISSA AT CUTTACK

CMP No. 513 of 2022

Subaneswar Khandai

.....

Petitioner

Mr. Bibekananda Bhuyan, Advocate

-versus-

Mayadhar Khandai and others

....

Opp. Parties

Mr. Ajit Kumar Tripathy, Advocate
(For Opposite Party No.1)

CORAM:

JUSTICE K.R. MOHAPATRA

ORDER

15.07.2022

Order No.

3. 1. This matter is taken up through Hybrid mode.
2. Petitioner in this CMP seeks to assail the order dated 21st May, 2022 (Annexure-10) passed by learned Civil Judge (Senior Division), Chandikhole in CMA No.25 of 2022 filed under Section 151 CPC.
3. Brief facts necessary for adjudication of the lis are that CS No.24 of 2021 has been filed for partition of the property in question. During pendency of the suit, the Petitioner filed an application under Order XXXIX Rules 1 and 2 CPC in IA No.17 of 2021, which was disposed of vide order dated 28th February, 2022 (Annexure-7), directing the parties to maintain status quo over the suit schedule land. Four days thereafter, the Opposite Party No.1, namely, Mayadhar Khandai filed an application under Section 151 CPC with a prayer to complete construction of his residential house, which is in a dilapidated condition with an undertaking that he would not claim any

equity in case of Plaintiff/Petitioner succeeds in the suit. An objection was filed stating that such an application is not maintainable. Learned Civil Judge (Senior Division), Chandikhore, however, vide his order dated 21st May, 2022 (Annexure-10) allowed the application of Opposite Party/Defendant No.1 directing him to give an undertaking with an affidavit that if the said house falls to the share of the Petitioner, he (Opposite Party/Defendant No.1) shall demolish the said construction at his own cost and he (Defendant No.1) shall not claim equity over such construction. Assailing the same, this CMP has been filed.

4. This Court, while issuing notice in the matter, vide order dated 7th June, 2022, stayed the operation of impugned order dated 21st May, 2022 till the next date and the said interim order is continuing till today.

5. Although learned counsel for the parties made elaborate submission, however, both of them submit that interest of justice will be best served if the suit is directed to be disposed of at an early date. It is their submission that the pleadings are complete in the suit and the same is ready for hearing. There is also no legal impediment for early disposal of the suit. They also undertake to cooperate learned trial Court for early disposal of the suit.

6. In view of such submissions, the CMP is disposed of with a direction that CS No.24 of 2021 pending before learned Civil Judge (Senior Division), Chandikhore shall be disposed of as expeditiously as possible, preferably by end of January,

2023. Parties are directed to cooperate learned trial Court for early disposal of the suit.

6.1 Impugned order dated 21st May, 2022 (Annexure-10) passed by learned Civil Judge (Senior Division), Chandikhole in CMA No.25 of 2022 shall be kept in abeyance till disposal of the suit.

Issue urgent certified copy of the order on proper application.



(K.R. Mohapatra)
Judge

s.s.satapathy