

IN THE HIGH COURT OF ORISSA AT CUTTACK

CMP No. 542 of 2022

Ranjan Panda

.....

Petitioner

Mr. Anam Charan Panda, Advocate

-versus-

Ranjan Kumar Nayak

....

Opp. Party

CORAM:

JUSTICE K.R. MOHAPATRA

ORDER

30.06.2022

Order No.

1. This matter is taken up through Hybrid mode.
2. Petitioner in this CMP seeks to assail the order dated 5th May, 2022 (Annexure-6) passed in CS No.57 of 2012 (III), whereby learned 3rd Additional Civil Judge (Senior Division), Cuttack rejected the application filed under Order XVI Rule 1 read with Rule 7-A of CPC to summon the vender of the Plaintiff to depose before the Court.
3. Mr. Panda, learned counsel for the Petitioner submits that the Petitioner is the sole Defendant in the suit. The suit has been filed for recovery of money against the present Petitioner. Evidence of the Plaintiff is over. It is the case of Petitioner/Defendant that he being the mediator in the sale transaction paid the money to the vender by collecting it from the Plaintiff. The consideration money was transferred to his account by the Plaintiff and on the very same day, he remitted the same to the vender. However, in the registered sale deed dated 7th May, 2010 recital has been made to the effect that the money was paid by the Plaintiff to the vender. In order to establish that the money

was paid to the vender by the Defendant (Petitioner), he filed an application under Order XVI Rule 1 read with Rule 7-A of CPC to summon the witness(es) to depose in the Court. Learned trial Court by pre-determining the issue observed that the Defendant wants to lead evidence in his support by gaining over the vender of RSD dated 7th May, 2010, rejected the petition. It is his case that before recording of evidence of the vender, Learned trial Court could not have formed an impression that the witness(es) to be summoned will be gained over by the Defendant. He further submits that although the recitals of RSD is that the Plaintiff has paid money to the vender, which is the requirement for execution of sale deed, but the fact remains that the Plaintiff paid money to the Defendant/Petitioner, who paid the same to vender for execution of registered sale deed dated 7th May, 2010. This fact is necessary to be proved by the Defendant to succeed in the suit. In view of the above, the vender is material witness to be examined in the case. Without taking into consideration the above material aspect, learned trial Court rejected the petition. Hence, this CMP has been filed.

4. Upon hearing learned counsel for the Petitioner and on perusal of record, it is apparent that the recital of the sale deed reveals that the Plaintiff has paid the money to his vender. The Defendant wants to prove that the money was paid to him by the Plaintiff- Opposite Party by transferring the same to his account and he, in turn, paid the money to the vender. It is open to the Defendant / Petitioner to prove his case by leading cogent evidence. If Defendant wants to examine the vender, he can produce him to lead evidence in support of his case. In that view of the matter, I find no reason for summoning the vender of the registered sale deed dated 7th May, 2010 to be examined on behalf

of the Defendant. As such, there is no infirmity in the impugned order.

5. Accordingly, the CMP stands dismissed.

Issue urgent certified copy of the order on proper application.

(K.R. Mohapatra)
Judge

s.s.satapathy

