

IN THE HIGH COURT OF ORISSA AT CUTTACK

CMP NO.92 OF 2021

With

CMP NO.456 OF 2020

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In CMP No.92/2021
Prem Kumar

.... *Petitioner*

Mr.L.K.Maharana, Adv.

-versus-

Bhagaban Ram & ors.

.... *Opposite Parties*

Mr.P.C.Acharya, Adv. for O.P.3

In CMP No.456/2020
Gangadhar Routray

.... *Petitioner*

Mr.P.C.Acharya, Adv.

-versus-

Prem Kumar & anr.

.... *Opposite Parties*

Mr.L.K.Maharana, Adv.

CORAM:
JUSTICE BISWANATH RATH

ORDER
11.1.2022

Order
No.

06.

1. Heard learned counsel for the Parties.
2. The dispute involves rejection of an application under Order 7 Rule 11 of C.P.C. at the instance of the Plaintiffs seeking rejection of counter claim by way of decision involving a preliminary issue. Subsequent development shows that the trial court having rejected the Order 7 Rule 11 Application, a Revision being preferred has also

come to be rejected in confirmation of the order of the trial court holding the counter claim is still maintainable.

3. CMP No.456/2020 was not in today's list but on being mentioned, on special notice the same is taken up along with CMP No.92/2021 through video conference mode. The CMP seeks a direction for expediting the trial.

4. Mr.Maharana, learned counsel for the Plaintiff taking this Court to filing of the Suit in the year 2006, Defendant No.3 purchasing the suit property in 2009 and filing counter claim in 2016, submitted that the counter claim likely to be affected by law of limitation. Further looking to the nature of the suit, learned counsel for the Petitioner also objected the entertainability of the counter claim, as ultimately the parties are to be bound by the final decision in the suit and Defendant No.3 being the lis pendent purchaser will also be bound by the same. It is keeping this in view, learned counsel for the Petitioner attempted to challenge the orders impugned herein and sought this Court to intervene and pass appropriate order.

5. Mr.Acharya, learned counsel for Defendant No.3 contested the challenge on the premises that since the sale by Defendant No.3 is on the basis of some order of this Court, the Defendant is well within his right to bring the counter claim. Mr.Acharya further contended that for the Defendant claiming right over the disputed property by virtue of a subsequent sale involved, his grievance needs to be redressed in the ultimate adjudication of the suit. It is also

argued that since Defendant No.3 is likely to be affected in the ultimate decision in the suit, his counter claim involving a serious issue ought to be considered. It is in such circumstance, Mr.Acharya claimed justification of both the impugned orders.

6. Considering the rival contentions of the Parties, this Court finds, there is limited consideration in considering the Application under Order 7 Rule 11 of C.P.C. Upon such an Application being filed, the issue raised is taken up as a preliminary issue and the dispute involved is decided accordingly but without involvement of process of trial. Looking to the nature of consideration involving the Application under Order 7 Rule 11 of C.P.C., this Court observes, there is virtual refusal of rejection of such claim by way of preliminary issue. Thus for the opinion of this court, rejection of Application under Order 7 Rule 11 of C.P.C. does not take away the effect of contest involving the Petitioner so involved particularly the counter claim involved herein. Contest is still available. Further looking to the nature of decree sought in the plaint involving the Civil Suit No.63/2006 and the nature of grievance involving counter claim, for the opinion of this Court, the challenge to the claim of right of Defendant No.3 by way of counter claim also on the limitation ground still subsists. Further looking to the nature of

dispute involved herein, this Court observes, ultimately the decision in the counter claim shall be dependent on final outcome of the suit. In the result, this Court finds, there is right consideration to the approach of the Plaintiff in contest of the counter claim and he has ample scope to contest the same in the ultimate trial of the suit.

7. In the above circumstance, this Court is not inclined to interfere with the impugned orders and keeping in view the above observation, this Court observes, the reasoning or finding in the rejection of Application under Order 7 Rule 11 of C.P.C. shall not stand on the way of consideration of the suit or the counter claim, which are required to be decided independent of such observation and finding. Considering the suit is pending since 2006 and it has already seen some progress in evidence, here keeping in view the Covid-19 situation affecting in the judicial proceeding also, in the event learned counsel appearing for both sides move the trial court for recording of evidence through video conference mode for expeditious disposal of the suit, the trial court shall do well in making such arrangement and finding expeditious disposal of the Civil Suit No.63/2006 at least within a period of nine months. Interim order dated 31.3.2021 passed in I.A. No.87 of 2021 (CMP No.92/2021) stands vacated.

8. Both the CMPs. stand disposed of accordingly.

9.. As restrictions due to resurgence of COVID-19 situation are continuing, learned counsel for the Parties may utilize a printout of the order available in the High Court's Website, at par with certified copy, subject to attestation by the concerned Advocate, in the manner prescribed vide Court's Notice No.4587 dated 25th March, 2020, modified by Notice No.4798 dated 15th April, 2021 and Court's Office Order circulated vide Memo Nos.514 and 515 dated 7th January, 2022.

M.K.Rout

