

IN THE HIGH COURT OF ORISSA AT CUTTACK

CMP No. 636 OF 2022

Prakash Chandra Jena

..... Petitioner

Mr.H.N.Mohatra, Advocate

-versus-

Taapoi Bewa and others

.... Opp. Parties

Mr. Amit Prasad Bose, Advocate
(For Opposite Party Nos. 4 and 5)

CORAM:

JUSTICE K.R. MOHAPATRA

ORDER

29.07.2022

Order No.

1. This matter is taken up through Hybrid mode.
2. Mr. Bose, learned counsel submits that he has entered appearance on behalf of Opposite Party Nos.4 and 5 by filing Vakalatnama on 25th July, 2022, but the same is not on record.
3. Office shall tag the Vakalatnama filed by Mr. Bose, learned counsel to record.
4. Petitioner in this CMP seeks to assail the order dated 22.07.2022 passed by learned Additional Senior Civil Judge, Puri in IA No.276 of 2022 (arising out of CS No.131 of 2018), whereby an application under Order XXXIX Rule 3 CPC has been rejected.
5. Mr. Mohapatra, learned counsel for the Petitioner submits that the suit has been filed for partition of joint family property. Parties to the suit are co-sharers of the suit property. During pendency of the suit, Defendants/Opposite Parties proceeded to make construction over the suit land. Hence, Plaintiff/Petitioner filed an application in IA No.276 of 2022

under Order XXXIX Rules 1 and 2 CPC with a prayer to restrain the Defendants/Opposite Parties to make any construction over the suit land. An application under Rule 3 CPC was also filed to dispense with service of notice on Opposite Parties before taking up application under Order XXXIX Rules 1 and 2 CPC for ad interim injunction. The said petition was rejected vide order under Annexure-4, which is under challenge in this CMP.

5.1 It is submitted by Mr. Mohapatra, learned counsel for the Petitioner that the suit land being the joint family property every co-sharer has interest over the suit land. If the Opposite Parties are allowed to make construction over the same, the Plaintiff/Petitioner will be highly prejudiced, as it may be difficult on his part to implement the decree of partition, if any.

6. Mr. Bose, learned counsel for the Opposite Party Nos. 4 and 5 on the other hand submits that the suit land is allotted to the Opposite Parties in a family partition and ROR has already been published in their name. It is further submitted that after rejection of the petition under Order XXXIX Rule 3 CPC, Plaintiff/Petitioner has also filed an application under Section 151 CPC on 20th July, 2022 along with a petition to advance the date of hearing of the IA filed for injunction. The said petition was taken up on 22nd July, 2022 and has been adjourned to be taken up along with IA. This fact has been suppressed by learned counsel for the Petitioner in the CMP.

7. Mr. Mohapatra, learned counsel for the petitioner, however, submits that by the time the CMP was filed order dated 22nd July, 2022 was not passed. Hence, there was no occasion on

the part of the Plaintiff/Petitioner to disclose the same in the CMP. He has also no instruction with regard to filing of application under Section 151 CPC or order passed therein.

8. In view of the above, this CMP is disposed of with a direction that if the Petitioner files an application to take out notice by special messenger before the learned trial Court, learned trial Court shall allow the petition on the date it is filed. On service of notice on the Opposite Parties, learned Additional Senior Civil Judge, Puri shall do well to consider the application in IA No.276 of 2022, as expeditiously as possible, preferably within a period of seven days from the date of service of notice.

9. No notice need be issued against the parties, who have already entered appearance.

Issue urgent certified copy of the order on proper application in course of the day.

(K.R. Mohapatra)
Judge