

IN THE HIGH COURT OF ORISSA AT CUTTACK

CMP NO. 639 OF 2022

Rabindra Behera

....

Petitioner

Mr. Sidheswar Mallick, Advocate

-versus-

Bhagirathi Barik and others

....

Opp. Parties

Mr. S.S.K. Nayak, Advocate

CORAM:

JUSTICE K.R. MOHAPATRA

ORDER

13.09.2022

Order No.

CMP NO. 639 OF 2022
& CMP NO. 543 OF 2022

2. 1. This matter is taken up through hybrid mode.
2. Both the CMPs have been filed assailing the order dated 3rd November, 2021 (Annexure-2) passed in FAO NO. 56 of 2021, whereby learned District Judge, Bhadrak passed the following order:

“That, the FAO brought by the Appellants (Opposite Parties of I.A. No. 83/2021) is allowed in part on contest against the Respondent-Petitioner, however without costs. The order of status quo dated 24.2.2021 is set aside in respect of Schedule plot No.1282. Both the parties to the I.A./present FAO are directed to make some amicable arrangement in finding out a pathway over the scheduled plot No.1277 covering minimum required area for the purpose and looking to the convenience of both the parties till final adjudication of the C.S. No.108 of 2021 of the Court of learned Civil Judge (Junior Division), Bhadrak.

The F.A.O. is disposed of accordingly.”

3. Learned counsel for both the parties submit that there is no possibility of any amicable settlement between the parties for providing pathway over Plot No.1277 recorded in the name of

Basudev Barik and others in the consolidation R.O.R. It is further submitted that none of the parties before learned appellate Court prayed for amicable settlement in the matter. In that view of the matter, learned appellate Court ought to have decided the matter on merit.

4. Taking into consideration the submissions made by learned counsel for the parties, this Court without delving into the merits of the case of either of the parties, sets aside the impugned order under Annexure-2 and remits the matter back to learned District Judge, Bhadrak to adjudicate F.A.O. NO.56 of 2021 afresh on merit, giving opportunity of hearing to the parties concerned.

5. With the aforesaid observation and direction, both the CMPs are disposed of.

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

(K.R. Mohapatra)
Judge

bks