

IN THE HIGH COURT OF ORISSA AT CUTTACK

CMP No.640 of 2022

Roshan Begum and others* *Petitioners

Miss Deepali Mahapatra., Advocate

-versus-

Damayanti Nayak and another* *Opp. Parties

**CORAM:
JUSTICE K.R. MOHAPATRA**

**ORDER
13.09.2022**

Order No.

2.
 1. This matter is taken up through Hybrid mode.
 2. Petitioner has filed this CMP assailing the order dated 30th June, 2022 (Annexure-5) passed in RFA No.6 of 2020, whereby learned Additional District Judge, Kodala rejected an application filed by the Petitioner under Order XIV Rule 5 read with Section 151 CPC praying *inter alia* to frame an additional issue basing on the pleadings of the parties to the suit and to take decision on each issue.
 3. It is submitted by Miss Mahapatra, learned counsel for the Petitioner that no additional evidence is required to be adduced by the parties if an additional issue to the effect '*whether sale deed No.141/03 said to have been executed by the vender is void and not binding on the plaintiff and whether Defendant No.1 is entitled to possess the suit house by sale deed No.141/03 in the facts and circumstances of the case*' is framed.
 - 3.1 She, however, submits that interest of justice will be best served if learned appellate Court proceeds in terms of Order XLI Rule 24 CPC, wherein it is provided that when the evidence upon the record is sufficient to enable the appellate Court to

pronounce judgment, the appellate Court may, after resettling the issue, if necessary finally determine the suit notwithstanding the judgment of the Court from whose decree the appeal has been preferred, has proceeded wholly upon some grounds other than that which the appellate Court proceeds.

4. In view of such submission made by learned counsel for the Petitioner, this Court without expressing any opinion on the merit of the case of the Petitioner, disposes of the CMP with a direction that in the event Petitioner files an application before the appellate Court to proceed with the matter in accordance with Order XLI Rule 24 CPC, it may deal with and adjudicate the same in accordance with law and proceed to adjudicate the appeal.

Issue urgent certified copy of the order on proper application.

(K.R. Mohapatra)
Judge

s.s.satapathy