

IN THE HIGH COURT OF ORISSA AT CUTTACK

CMP NO. 673 OF 2022

Aparajita Pattnaik

....

Petitioner

Mr. Amitav Bagchi, Senior Advocate
along with Mr. D. Nanda, Advocate

-versus-

Abanindra Pattanaik

....

Opp. Party

Mr. Jyoti Pattnaik, Advocate

CORAM:

JUSTICE K.R. MOHAPATRA

ORDER

07.09.2022

Order No.

3. This matter is taken up through hybrid mode.
2. The Petitioner in this CMP is aggrieved by the observation made by learned District Judge, Puri while adjudicating I.A. No. 26 of 2022 (arising out of FAO No. 29 of 2022) to the effect that “in such an eventuality, filing of fresh suit, i.e. C.S. No. 531 of 2021, is unwarranted and uncalled for inasmuch as the same relief could have been sought for in the earlier suit, i.e. C.S. No.93 of 2019”.
3. Mr. Nanda, learned counsel submits that the Petitioner is not aggrieved by the order restraining her from alienating the suit house to any third party during disposal of appeal but the observation as aforesaid has a far reaching effect and it may affect the merit of C.S. No. 531 of 2021. It is his submission that neither maintainability of C.S. No. 531 of 2021 was an issue before learned District Judge, Puri while adjudicating I.A. No. 26 of 2022 nor the same was raised by any of the parties at the time of hearing of said I.A. Hence, the observation made may be struck down.

4. Mr. Pattnaik, learned counsel for the Opposite Party although accepted the plea of Mr. Nanda, learned counsel for the Petitioner to the effect that maintainability of C.S. No.531 of 2021 was not an issue, while adjudicating I.A. No.26 of 2022, nor the same was raised by any of the parties but submits that learned appellate Court has committed no error in observing so, the subsequent suit for permanent injunction in C.S. No.531 of 2021 is not maintainable during pendency of C.S. No.93 of 2019, where such a relief could have been sought for. He, therefore, prays for dismissal of CMP.

5. Taking into consideration the rival contentions of the parties, this Court is of the considered opinion that when maintainability of C.S. No.531 of 2021 was neither an issue nor raised by any of the parties while adjudicating I.A. No.26 of 2022, learned District Judge, Puri should not have made such observation.

6. In view of the above, this Court disposes of CMP with an observation that the aforesaid observation made by learned District Judge, Puri is *prima facie* in nature and is always subject to adjudication, if raised by any of the parties in an appropriate suit or proceeding.

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

(K.R. Mohapatra)
Judge

bks