

IN THE HIGH COURT OF ORISSA AT CUTTACK

CMP NO. 688 OF 2022

Anup Kumar Dhirsamant ***Petitioner***
Mr. Banshidhar Baug, Advocate
-versus-
Chatrubhuja Naik and others ***Opp. Parties***

CORAM:
JUSTICE K.R. MOHAPATRA

ORDER
03.08.2022

Order No.

1. This matter is taken up through hybrid mode.
2. The Petitioner in this CMP seeks to assail the order dated 9th February, 2022 passed by learned Civil Judge (Senior Division), Angul in Civil Suit No.250 of 2010, whereby a direction was made to put up the case record on 16th March, 2022 for evidence instead of hearing on the issues formulated by this Court in W.P.(C) Nos.19205 and 19204 of 2011.
3. Mr. Baug, learned counsel for the Petitioner submits that while adjudicating the aforesaid two writ petitions filed against the order dated 8th July, 2011 passed by learned Civil Judge (Senior Division), Angul in I.A. No. 76 of 2010 (arising out of C.S. No.250 of 2010) and the order dated 8th July, 2011 passed by learned Civil Judge (Senior Division), Angul in I.A. No.105 of 2010 (arising out of C.S. No.314 of 2010), this Court formulated the following questions:

“(i) Whether the registered irrevocable general power of attorney executed in favour of the petitioner in the year 1993 subsists and is in operation and if so whether the same can be ignored by execution of another power of attorney by one of the principal

*without description of the property in the second general power of attorney; and
(ii) Whether a general power of attorney in respect of immovable properties can be registered without description of property in the said document and if registered what will be its effect?”*

And directed learned trial Court to deal with the aforesaid issues at the first instance and then proceed with the suits on the basis of the findings arrived at. It was also directed to maintain status quo in respect of the suit properties till disposal of the suits.

4. However, learned Civil Judge (Senior Division), Angul referring to the order passed in W.P.(C) No. 11193 of 2011 (wrongly stated as W.P.(C) No.11197 of 2011) and the order passed pursuant thereto directed to proceed with the hearing of the suit ignoring the orders passed in W.P.(C) Nos.19205 and 19204 of 2011. It is pertinent to mention here that the orders passed by learned trial Court pursuant to direction in W.P.(C) No.11197 of 2011 were under challenge in W.P.(C) Nos.19205 and 19204 of 2011.

5. In view of the above, Mr. Baug, learned counsel for the Petitioner submits that the impugned order is not sustainable in the eyes of law. He, therefore, submits that the matter may be remitted back to the learned Civil Judge (Senior Division), Angul to act upon the direction made by this Court in W.P.(C) Nos.19205 and 19204 of 2011.

6. On perusal of the impugned order, it appears that apparently learned trial Court has not take into consideration the order passed in the aforesaid two writ petitions and only referring to the order passed in W.P.(C) No.11197 of 2011 and holding that the said order has been carried out, has passed the

impugned order. It further appears that learned trial Court did not, at all, take into consideration that the orders passed pursuant to W.P.(C) No.11197 of 2011 were challenged in W.P.(C) Nos.19205 and 19204 of 2011 and the aforesaid direction was made.

7. In view of the above, this Court without expressing any opinion on the merits of the case of the Petitioner disposes of this CMP with a direction that in the event the Petitioner files an application to recall the order dated 9th February, 2022 posting the matter to 16th March, 2022 for evidence and to take a decision on the issue formulated by this Court in W.P.(C) Nos. 19205 and 19204 of 2011, the same shall be considered in accordance with law giving opportunity of hearing to the parties concerned.

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

संस्थानिक न्याय (K.R. Mohapatra)
Judge

bks