

IN THE HIGH COURT OF ORISSA AT CUTTACK

CMP No. 692 of 2022

Jhunulata Sahoo

..... Petitioner

Mr. A.C. Sarangi, Advocate

-versus-

Sabita Nayak

.... Opp. Party

CORAM:

JUSTICE K.R. MOHAPATRA

ORDER

16.08.2022

Order No.

1. This matter is taken up through Hybrid mode.
2. Petitioner in this CMP seeks to assail the order dated 7th April, 2022 (Annexure-1) passed by learned Senior Civil Judge, Jajpur in IA No.375 of 2021 (arising out of CS No.467 of 2020 and IA No.175 of 2021) whereby an application under Section 151 CPC filed by the present Petitioner has been dismissed.
3. Mr. Sarangi, learned counsel submits that the suit has been filed for eviction of the present Petitioner. When the Plaintiff-Opposite Party disturbed possession of the present Petitioner (Defendant in the suit), she filed an application under Order XXXIX Rules 1 and 2 CPC in IA No.175 of 2021. The said application was disposed of vide order dated 28th July, 2021 directing the parties to maintain status quo over the suit property. When the matter stood thus, the Plaintiff-Opposite Party taking advantage of absence of Defendant-Petitioner in the suit house sealed the main gate (grill) by wielding the same. Thus, the Petitioner could not enter upon the suit property. In view of the above, the Petitioner immediately filed an

application under Order XXXIX Rule 2-A CPC for violation of the order of injunction. She also lodged an FIR in the Police Station. When nothing yielded any result she filed an application under Section 151 CPC in IA No.375 of 2021 to restore her possession over the suit property pursuant to the direction in IA No.175 of 2021. The said application being rejected the Petitioner has challenged the same in this CMP.

4. It is submitted by Mr. Sarangi, learned counsel that the suit has been filed for eviction of the present Petitioner, which indicates that the Petitioner was in possession over the suit property. Learned trial Court considering the same has also directed the parties to maintain status quo over the suit property in IA No.175 of 2021. Taking advantage of absence of the Petitioner-Defendant in the house, the Plaintiff-Opposite Party sealed the main gate by wielding the same. Hence, the Petitioner is not in a position to enter upon the suit property and is homeless at present. Although an application under Section 39 Rule 2-A CPC has been filed, but the same is pending for consideration. In view of the above, she filed an application under Section 151 CPC to restore her possession. Learned trial Court without considering the fact and submission of parties rejected the same.

5. Upon hearing learned counsel for the Petitioner and on perusal of record, it appears that on consideration of materials on record, learned trial Court, vide order dated 28th July, 2021 directed the parties to maintain status quo over the suit property in IA No.175 of 2021. It also reveals from the record that an application for violation of the said order is pending for

consideration. The Petitioner by filing the IA No.375 of 2021 under Section 151 CPC prays for restoration of her possession over the suit property, which is a matter for adjudication in the application under Order XXXIX Rule 2-A CPC. The prayer made in the petition under Section 151 CPC can only be granted, if it is held that the Opposite Party in violation of the order of status quo has ousted the Petitioner from the suit house. Learned trial Court relying upon a decision in the case of *E.I.D. Parry Limited Vs. Agro Sales and Service and others*, reported in 50 (1980) CLT 419 (FB) came to hold that when statutory remedy is available to the Petitioner, petition under Section 151 CPC is not maintainable. When remedy under Order XXXIX Rule 2-A CPC is available to the Petitioner and an application under the said provision is pending considering, a petition under Section 151 CPC will not be maintainable. In view of the above discussion and taking into consideration the facts and circumstances of the case, I do not find any infirmity in the impugned order.

6. Accordingly, the CMP being devoid of any merit stands dismissed.

(K.R. Mohapatra)
Judge