

IN THE HIGH COURT OF ORISSA AT CUTTACK
CMP No. 693 OF 2022

Subarna Naik

....

Petitioner

Mr. Sukanta Kumar Nayak, Advocate

-versus-

Nitya Naik and others

....

Opp. Parties

CORAM:
JUSTICE K.R. MOHAPATRA

ORDER
23.09.2022

Order No.

2. 1. This matter is taken up through hybrid mode.
2. 2. The Petitioner in this CMP seeks to assail the order dated 9th February, 2022 (Annexure-5) passed by learned Civil Judge (Senior Division), Keonjhar in Execution Case No.06 of 2006, whereby the execution proceeding was dropped on the ground that the Petitioners-D.Hrs did not co-operate with the Civil Court Commissioner for delivery of possession.
3. 3. Mr. Nayak, learned counsel for the Petitioner submits that T.S. No.39 of 2001 was filed for partition. A preliminary decree was passed on 29th March, 2003. Thereafter, final decree was drawn up on 11th January, 2006. Since the Defendants did not act pursuant to the final decree proceeding, Execution Case No.06 of 2006 was filed by the Plaintiffs.
4. 4. Learned executing Court without considering that there was no occasion on the part of the Plaintiffs not co-operate the Civil Court Commissioner as they are the decree holders and the execution proceeding has been filed at their instance, passed the impugned order on 9th February, 2022 under Annexure-5 on the

ground that the Plaintiffs-D.Hrs did not cooperate with the Civil Court Commissioner for executing the decree and delivery of possession.

5. Mr. Nayak, learned counsel for the Petitioner submits that due to some misunderstanding and miscommunication, the aforesaid situation had occurred. In the event, the impugned order is not set aside, the Plaintiffs-D.Hrs will suffer irreparable loss and they will be prevented from enjoying the fruit of the decree. It is his submission that in the event they are provided with opportunity, the Plaintiffs will cooperate with the Civil Court Commissioner for delivery of possession of respective shares. He, therefore, prays that a lenient view may be taken and they may be given another opportunity to participate in the Execution Case No.06 of 2006.

6. Taking into consideration the submission made by learned counsel for the Petitioner, this Court is of the considered opinion that the Plaintiffs-D.Hrs should make a prayer before the concerned Court to provide another opportunity to cooperate with the Civil Court Commissioner.

7. In that view of the matter, this Court without expressing any opinion on the merits of the case of the Petitioner, disposes of the CMP with a direction that in the event the Petitioner files an application to recall the order dated 9th February, 2022 under Annexure-5 with an undertaking that he shall cooperate with the Civil Court Commissioner for execution of the final decree, learned Civil Judge (Senior Division), Keonjhar shall do well to

consider the same in accordance with law giving opportunity of hearing to the parties concerned.

8. Learned trial Court may also impose adequate cost on the Petitioner, if situation so arises.

9. With the aforesaid observation and direction, this CMP is disposed of.

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

(K.R. Mohapatra)
Judge



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