

IN THE HIGH COURT OF ORISSA AT CUTTACK

CMP No.712 of 2022

Fakir Charan Rout and another* *Petitioners

Mr. Samir Kumar Mishra, Advocate

-versus-

Dipak Maharana* *Opp. Party

CORAM:

JUSTICE K.R. MOHAPATRA

ORDER

16.08.2022

Order No.

1. This matter is taken up through Hybrid mode.
2. Petitioners in this CMP pray for setting aside order dated 16th July, 2022 and 25th July, 2022 (Annexure-4 series) passed by learned Civil Judge (Senior Division), Anandpur in IA No.42 of 2022 (arising out of CS No.103 of 2022), whereby petitions under Order XXXIX Rule 3 CPC were rejected.
3. Mr. Mishra, learned counsel for Plaintiffs/Petitioners submits that CS No.103 of 2022 has been filed for declaration of right, title, interest and possession over the suit property and to declare the registered sale deed dated 18th January, 2022 executed in favour of Defendant No.13 to be void and not binding on the Plaintiff, for recovery of possession as well as for other consequential relief. Since Defendant No.13 proceeding with construction over the suit property, IA No.42 of 2022 was filed under Order XXXIX Rules 1 and 2 CPC with a prayer to restrain the Opposite Parties from proceeding with construction over Plot No.695 to an extent of Ac.0.05 decimal. As there was urgency, Petitioners also filed an application under Order XXXIX Rule 3 CPC to take up the application filed under Order XXXIX Rules 1 and 2 CPC dispensing with

service of notice of Defendant, which was rejected vide order dated 16th July, 2022. When Defendant No.13/Opposite Party proceeded further with construction, the Plaintiff moved another application under Order XXXIX Rule 3 CPC, which was also rejected vide order dated 25th July, 2022.

4. It is submitted by Mr. Mishra, learned counsel for the Petitioners that by dismissing the application under Order XXXIX Rule 3 CPC the matter has been posted to 19th September, 2022 awaiting SR from Defendant No.13/Opposite Party. It is his submission that by the said date the construction over the suit property might be over and the petition under Order XXXIX Rules 1 and 2 CPC would be infructuous. He, therefore, prays for a direction to pass an ad interim order of status quo till appearance of Defendant No.13/Opposite Party.

5. Upon hearing learned counsel for the Petitioners as well as facts and circumstances of the case as stated above, this Court disposes of the CMP with an observation that in the event the Petitioners file an application to take out notice on Defendant No.13/Opposite Party by alternate mode, the same may be considered forthwith and the Plaintiffs/Petitioners may be allowed to take out notice on special messenger on Defendant No.13/Opposite Party by fixing a short date of appearance and IA No.42 of 2022 may be heard expeditiously. It is made clear that this Court has not expressed any opinion on the merit of the case of the Plaintiffs/Petitioners.

Issue urgent certified copy of the order on proper application.

(K.R. Mohapatra)
Judge