

IN THE HIGH COURT OF ORISSA AT CUTTACK

CMP No. 724 of 2022

Sudesh Kumar Routay

..... Petitioner

Mr. Banshidhar Baug, Advocate

-versus-

Purna Chandra Mohanty and others

.... Opp. Parties

CORAM:

JUSTICE K.R. MOHAPATRA

ORDER

Order No.

17.08.2022

1. This matter is taken up through Hybrid mode.
2. Petitioner in this CMP seeks to assail the order dated 4th August, 2022 (Annexure-5) passed by learned 2nd Additional Civil Judge (Senior Division), Bhubaneswar in IA No. 1 of 2022 (arising out of CS No.502 of 2022), whereby, an application filed by the Petitioner/Defendant No.7 to adduce evidence in the IA was rejected.
3. Mr. Baug, learned counsel for the Petitioner submits that on receipt of notice in IA No.1 of 2022 (arising out of CS No.502 of 2022), the Petitioner/Defendant No.7 filed his objection stating that he has purchased Lot No.2 from Defendant No.1 by virtue of RSD and is in possession over the same. He has also paid the entire consideration money to Defendant No.1 through RTGS and bank draft. In order to establish the same, he filed an application to lead evidence in the matter. Learned trial Court taking into consideration the materials available on record, held that allowing the Petitioner/Defendant No.7 to adduce evidence while dealing

with the IA, will frustrate the very purpose of filing of the suit and rejected the petition. It is submitted by Mr. Baug, learned counsel that there is no legal bar for a party to lead evidence in a petition under Order XXXIX Rules 1 and 2 CPC. On being asked for, it should be allowed unless there is any compelling circumstance to deny the same. There is no compelling circumstance in the case at hand to deny leading evidence by Defendant No.7 for adjudication of the IA. On the other hand, it will facilitate proper adjudication of the IA. In view of the above, he prays for setting aside the order under Annexure-5 and direct learned trial Court to allow the Petitioner/Defendant No.7 to lead evidence in the IA, which will avoid multiplicity of litigation.

4. Taking into consideration the submission made by learned counsel for the Petitioner and that the Petitioner wants to lead evidence in IA No.1 of 2022 filed by the Plaintiff under Order XXXIX Rules 1 and 2 CPC, this Court feels that the same should have been allowed. Law is well-settled that materials produced including the oral evidence at the time of adjudication of interlocutory application cannot be considered as evidence during adjudication of the suit. Since Defendant No.7 wants to lead evidence for adjudication of the IA, learned trial Court should have allowed the same, unless there is any compelling circumstance to deny it.

5. In view of the above, this Court without, issuing notice to the Opposite Parties, sets aside the impugned order under Annexure-5 and directs learned trial Court to allow the Defendant No.7/Petitioner to lead evidence in IA No.1 of 2022. It is further made clear that parties to the said IA, if asked for,

may also be allowed to lead evidence in the matter. However, the IA should not be unnecessarily adjourned for leading evidence.

6. With the observation and direction, as aforesaid, the CMP is disposed of.

7. Since the CMP is disposed of without issuing notice to Opposite Parties they are at liberty to seek variation of the same, if they feel aggrieved by this order.

Issue urgent certified copy of the order on proper application.



s.s.satapathy