

IN THE HIGH COURT OF ORISSA AT CUTTACK

CMP No. 729 OF 2022

Soumendra Kumar Mohapatra* *Petitioner

Mr. Suvashish Pattanaik, Advocate

-versus-

Sunil Kumar Mohapatra* *Opp. Party

Mr. Ranjan Kumar Pati, Advocate

CORAM:

JUSTICE K.R. MOHAPATRA

ORDER

15.12.2022

Order No.

3. 1. This matter is taken up through hybrid mode.
2. Order dated 2nd September, 2022 (Annexure- 6) passed by learned Civil Judge (Senior Division), L.R., Bhubaneswar in I.A. No. 01 of 2020 (arising out of C.S. No. 1042/2020) is under challenge in this CMP, whereby an application filed by the Petitioner for analogous hearing of I.A. Nos. 01 of 2020 and 04 of 2020, has been rejected.
3. Mr. Pattanaik, learned counsel for the Petitioner submits that Civil Suit No. 1782 of 2016 has been filed by the widow of Mr. Saroj Kumar Mohapatra against their four sons and three daughters. The suit was decreed on compromise. Since the Opposite Party did not respect of the compromise decree and tried to lock the grill gate of the staircase, which is the common passage and prevented the Petitioner from using the pump house and well, Civil Suit No. 1042 of 2020 has been filed for

permanent injunction both prohibitory and mandatory along with consequential relief. In the said suit, the Petitioner filed I.A. No. 01 of 2020, under Order XXXIX Rules 1 and 2 C.P.C. and an *ex parte* ad-interim order of injunction has been passed, which is continuing. Since the Opposite Party prevented the Petitioner from using the common staircase as well as pump house including the well, a petition for mandatory injunction has also been filed in I.A. No. 04 of 2020. In I.A. No. 04 of 2020, the Opposite Party filed a petition under Order XXXIX Rule 7 C.P.C. for deputing a Commissioner for local inspection. But the Commissioner could not submit the report, as the Opposite Party prevented the Commissioner from visiting the spot. As such, he (Commissioner) returned the writ. Subsequently, the Petitioner filed an application to hear both I.A. No. 01 of 2020 and I.A. No. 04 of 2020 analogously, after receipt of the report of the Commissioner. The said petition being dismissed, present CMP has been filed.

4. It is submitted by Mr. Pattanaik, learned Counsel for the Petitioner that the Commissioner was deputed on the prayer of the Opposite Party and he himself prevented the Commissioner to visit the spot and submit the report. As such, the police assistance should be extended for visiting the spot to submit the report. After receipt of the report, both the petitions i.e. I.A. No. 01 of 2020 and I.A. No. 04 of 2020 can be disposed of. Learned trial Court failed to appreciate the same and passed the impugned order.

5. Mr. Ranjan Kumar Pati, learned counsel for the Opposite Party strenuously objected to the same and submits that the Commissioner has already returned the writ. Thus, the order appointing the Commissioner is already exhausted and no more available and requirement of police assistance to visit the spot by the Commissioner to submit the report does not arise at all. Further, the relief sought for in I.A. No. 01 of 2020 and I.A. No. 04 of 2020 are different. Hence, both the Petitions cannot be heard simultaneously. Learned trial Court discussing the aforesaid aspects dismissed the petitions. As such, there is no illegality in the impugned order.

6. Considering the submissions made by the learned counsel for the parties, this Court finds the Commissioner has already returned the writ. Thus, the order appointing a Commissioner to visit the spot and submit a report is already exhausted. Neither further writ has been issued to the Commissioner nor any prayer to that effect has been made. Hence, the order appointing a Pleader Commissioner to visit the spot has already been exhausted. It further appears that I.A. No. 01 of 2020 has been filed for temporary injunction and I.A. No. 04 of 2020 has been filed for mandatory injunction. The subject matter of the dispute in both the petitions is also same. Hence, for all fairness and to avoid conflicting orders, both the petitions should be heard analogously.

7. In that view of the matter, the CMP is disposed of with a direction that both I.A. No. 01 of 2020 and I.A. No.04 of 2020 shall be heard analogously at an early date without awaiting the

Commissioner's report. Parties are directed to co-operate with learned trial Court for early disposal of the I.As.

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

(K.R.Mohapatra)
Judge

Deepak

