

IN THE HIGH COURT OF ORISSA AT CUTTACK
CMP No. 734 OF 2022

Dhuruba Charan Sahoo ***Petitioner***
Mr. Swarup Kumar Patnaik, Advocate

-versus-

Rabindranath Sahoo and others ***Opp. Parties***
Mr. Prasanta Kumar Satapathy, Advocate
(For Opposite Party No.1)

CORAM:
JUSTICE K.R. MOHAPATRA

ORDER
22.08.2022

Order No.

01. 1. This matter is taken up through hybrid mode.
2. Petitioner in this CMP seeks to assail the order dated 14th July, 2022 (Annexure-7) passed by learned Civil Judge (Senior Division), 2nd Court, Cuttack in C.S. No.12 of 2005-I, whereby he allowed an application to exhibit the certified copy of the trace map attached to the Registered Agreement No.1346 dated 24th August, 1998.
3. Mr. Patnaik, learned counsel for the Petitioner submits that C.S. No.12 of 2005-I has been filed for right of easement. During cross-examination of D.W.1, he has categorically stated as under:

“43. It is a fact that plot nos.3323, 3321, 3320, 3319, 3318, 3316, 3315 and 3312 are described under Ext.B. It is true that Ext.B does not contain any map. I cannot say, if Ext. B contains the name of the Amin, who prepared the sketch map.”

4. Ext.‘B’ is the said Registered Agreement No.1346 dated 24th August, 1998. Subsequently, the Petitioner filed an application to exhibit the trace map attached to Ext.‘B’ by

filing an application and stated that on 2nd February, 2022 he got the certified copy of the trace map attached to the Ext. 'B', which was not supplied to him earlier. It is his submission that in view of the Section 31 of the Evidence Act, 1872 (for short 'the Act'), the admission made by D.W.1 in his evidence to the effect that there is no trace map attached to the Ext. 'B' operates as an estoppel to take the plea that he obtained the certified copy subsequently. Learned trial Court, without considering the same, allowed the petition and permitted the Defendant No.1 to exhibit the last page of the agreement, which contains the trace map. He also relied upon the decisions in the case of ***Bhagat Singh and others –v- Jaswant Singh***, reported in AIR 1966 SC 1861; ***Mrs. Om Prabha Jain –v- Abnash Chand and another***, reported in AIR 1968 SC 1083 and ***Narayan Bhagwantrao Gosavi Balajiwale –v- Gopal Vinayak Gosavi and others***, reported in AIR 1960 SC 100 in support of his case and submits that if the petition is allowed, then there will be no sanctity of the cross-examination made to the witness. Further, it will linger the proceeding of the suit. Ext. 'B' has no relevance for adjudication of the suit itself. Hence, the impugned order under Annexure-7 is not sustainable in the eyes of law and is liable to be set aside.

5. Mr. Satapathy, learned counsel for the Opposite Party No.1 submits that the certified copy of Ext. 'B' supplied to the Defendant-Opposite Party No.1 earlier did not contain the last page of the said agreement, which contains the trace map for which D.W.1 referring to Ext. 'B' deposed as above. Subsequently, Defendant-Opposite Party No.1 could obtain the

same on 2nd February, 2022 and filed an application to exhibit the said last page, which contains the trace map attached to Ext. 'B'. He, therefore, submits that D.W. 1 on a bonafide impression that no trace map was attached to the Ext. B had made a statement at Paragraph-43 of his cross-examination. At that point of time, Defendant No.1 did not have the complete copy of the agreement. It came to light subsequently when verification was made at the office of the Sub-Registrar. In view of the above, learned trial Court has committed no error in allowing such application, which is necessary for just and proper adjudication of the suit. He, therefore, prays for dismissal of the CMP.

6. Taking into consideration the rival contentions of the parties, this Court finds that Ext. 'B' is the certified copy of the Registered Agreement No.1346 dated 24th August, 1998. Ext. 'B' did not contain the last page of the agreement, which was obtained subsequently by Defendant No.1. The mistake was on the part of the office of Sub-Registrar in supplying the certified copy of the Ext. 'B'. Under a bonafide impression that Ext. B was the complete copy of the agreement, the D.W. 1 made a statement that it did not contain any trace map. But on verification, it was found that the last page of the agreement was not supplied to the Defendant, which was obtained subsequently. In view of the above, Section 31 of the Act is not applicable to the case at hand. Further, relevancy of the document can only be gone into at the time of argument and can be dealt with in the judgment itself.

7. In view of the above, I find no infirmity in the impugned order under Annexure-7 in allowing Defendant-Opposite Party No.1 to mark the last page of the Registered Agreement, which contains trace map of Ext. 'B'.

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

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

(K.R. Mohapatra)
Judge



ms