

IN THE HIGH COURT OF ORISSA AT CUTTACK

CMP NO. 848 OF 2022

Anshuman Behera **Petitioner**

Mr. Swarup Kumar Pattnaik, Advocate

-versus-

Gurubari Baskey **Opp. Party**

CORAM:
JUSTICE K.R. MOHAPATRA

ORDER
26.09.2022

Order No.

1. This matter is taken up through hybrid mode.
2. The Petitioner in this CMP seeks to assail the order dated 23rd July, 2022 (Annexure-11) passed by learned Senior Civil Judge, Baripada in C.S. No. 156 of 2016, whereby an application under Order XXVI Rule 9 C.P.C. filed by him has been rejected.
3. Mr. Pattnaik, learned counsel for the Petitioner submits that C.S. No. 156 of 2016 has been filed by the Petitioner for declaration of right, title and interest and for eviction of Defendant-Opposite Party. The sole Defendant appeared in the suit and filed written statement taking a plea that the land in question was in possession of her father since 1962 and after him, she is occupying the entire suit land. He further submits that specific plea of the Petitioner is that out of Ac.0.07 decimals of land, the Defendant is occupying Ac.0.04 decimals of land. In order to elucidate the matter in controversy, a survey knowing commissioner is required to be deputed, who can through light on the possession of Defendant. Learned trial Court holding that the Plaintiff has got the land identified by the concerned R.I. and has

examined him as P.W.2, refused to entertain the said application. It is his submission that in the cross-examination, there are some discrepancies in the evidence of P.W.2, which can only be clarified, if a survey knowing commissioner is deputed and measures the land in presence of the parties. He, therefore, prays for setting aside the impugned order and to allow the application filed by the Plaintiff-Petitioner under Order XXVI Rule 9 C.P.C.

4. Considering the submission made by learned counsel for the Petitioner and on perusal of the materials on record, it appears that evidence of the parties in the suit has already been closed. At this stage, an application under Order XXVI Rule 9 C.P.C. has been filed by the Plaintiff-Petitioner to depute a survey knowing commissioner to identify the suit property. It is not disputed by learned counsel for the Petitioner that the land in question has already been identified by the concerned R.I., who has been examined as P.W.2. There are some discrepancies in the evidence of P.W.2. Since the Defendant-Opposite Party claims that she is in possession over the entire Ac.0.07 decimals of land, the Plaintiff-Petitioner prayed that a survey knowing commissioner should be deputed. The contention of learned counsel for the Petitioner is not acceptable as the Petitioner has already got the land measured/identified by the concerned R.I. and he has already been examined as P.W.2. Only because there are some discrepancies in the evidence of P.W.2, that cannot be a ground to depute a survey knowing commissioner. Since the evidence of parties has already been closed in the suit, learned trial Court can take materials available on record into consideration in the judgment itself. It, however, does not entitle the Petitioner to seek

a relief for deputation of a survey knowing commissioner.
Hence, I find no infirmity in the impugned order.

5. 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

bks

