

IN THE HIGH COURT OF ORISSA AT CUTTACK

CMP No. 877 of 2022

Punananda Behera and others* *Petitioners

Mr. Niranjan Prasad Patra, Advocate

-versus-

Achutananda Behera and others* *Opp. Parties

**CORAM:
JUSTICE K.R. MOHAPATRA**

**ORDER
28.09.2022**

Order No.

1. This matter is taken up through hybrid mode.
2. Petitioners in this CMP seek to assail the order dated 12th April, 2022 (Annexure-4) passed by learned Senior Civil Judge, Salipur in Final Decree Proceeding of CS No.101 of 2005, whereby the report submitted by the Civil Court Commissioner determining the share of the Plaintiff and identifying the passage has been rejected.
3. Mr. Patra, learned counsel for the Petitioners submits that since CS No.101 of 2005 was filed for partition, on consideration of the materials on record, learned trial Court pronounced the judgment on 21st April, 2015 holding as under:-

“The suit be, and the same is decreed preliminarily, in part, on contest, against the defendants no.2 and ex-parte against the defendant no.3 without cost.

It is hereby held that the plaintiff has 1/4th share in the suit property as prayed for. The parties are directed to amicably divide the suit property amongst themselves in accordance with their shares determined in the suit and to

bring back the suit common passage to its original position within three months hence, failing which each of the party is at liberty to get the suit property partitioned and get restored the aforesaid common passage to its original position through the process of Court.”

Accordingly, the preliminary decree was passed. In the final decree proceeding, learned trial Court appointed a Civil Court Commissioner to identify the respective shares of the parties. The Civil Court Commissioner has submitted a report in accordance with the preliminary decree, in which learned trial Court held that the Plaintiff is entitled to 1/4th share in the suit property and to bring back the suit common passage to its original position. Accordingly, the Civil Court Commissioner carved out 1/4th share and identified the suit passage. As such, no error has been committed by the Civil Court Commissioner by submitting his report. However, learned trial Court without accepting the report held that the Civil Court Commissioner has not carved out the respective shares and accordingly rejected the report submitted by the Civil Court Commissioner.

4. In course of hearing, Mr. Patra, learned counsel for the Petitioner submits that although in the ordering portion of the judgment, learned trial Court has only held that the Plaintiff is entitled to 1/4th share, but while discussing issue No.3, he has also determined the share of the Defendants along with the Petitioners as well as the common passage. He, therefore submits that since the suit is of the year 2005 interest of justice will be best served if an early date is fixed by appointing a fresh Commission to carve out the share of the parties as per the preliminary decree.

5. In view of the above, this Court, without interfering with the impugned order under Annexure-4, disposes of the CMP with a direction that learned trial Court shall do well to depute a Commission at an early date and see that the final decree proceeding of the suit is disposed of early. Parties to the suit are directed to cooperate with learned trial Court for early disposal of the final decree proceeding.

Issue urgent certified copy of the order on proper application.



s.s.satapathy