

**IN THE HIGH COURT OF ORISSA AT CUTTACK**

**CMP No.1497 OF 2018**

***Rabindra Mohanty***

***..... Petitioner***

Mr. Sitakanta Hota, Advocate

***-versus-***

***Purna @ Purna Chandra Mohanty and ..... Opp. Parties  
others***

Mr. Bhabani Sankar Das, Advocate

**CORAM:**

**JUSTICE K.R. MOHAPATRA**

**ORDER**

**27.07.2022**

**Order No.**

12. 1. This matter is taken up through Hybrid mode.
2. Petitioner in this CMP seeks to assail the order dated 6<sup>th</sup> August, 2018 (Annexure-1) passed by learned Civil Judge (Junior Division), Jaleswar in CS No.64 of 2011, whereby an application filed by the Petitioner/Defendant No.1 for admitting some public documents in evidence was rejected.
3. Mr. Hota, learned counsel for the Petitioner submits that the suit, i.e., CS No.64 of 2011 has been filed for partition. At the stage of argument, Defendant No.1 could detect some public document, which is essential for just adjudication of the suit, could not be exhibited on their behalf. An application was filed to that effect on 27<sup>th</sup> June, 2018 (Annexure-4) to mark the said document as an Exhibit on behalf of the Defendant No.1/Petitioner. The said application was rejected on the ground of non-mentioning necessity of exhibiting such document at the stage of argument in the petition. Further

sufficient opportunity was given to Defendant No.1 to exhibit such document at the stage of hearing.

3.1 It is further submitted that the document intended to be marked as exhibit is MS ROR in respect of Khata No.346, which was with the Advocate Clerk at Balasore. As the Defendant No.1 could meet the Advocate Clerk to collect the same, it could not be exhibited. Since the document is essential for just adjudication of the suit, the same ought to have been admitted in evidence. Learned trial Court has not examined the matter from this angle. Hence, the impugned order is not sustainable and is liable to be set aside. In support of his contention, he also relied on a decision of this Court in the case of *Nilamani Nayak Vs. Shantilata Nayak and others*, reported in 2016 (II) OLR 44.

4. Mr. Das, learned counsel for the Opposite Party No.1 submits that similar application filed by Defendant No.1/Petitioner was rejected vide order dated 6<sup>th</sup> July, 2018 and the same was never challenged by Defendant No.1/Petitioner. By filing such application under Annexure-4, Defendant No.1 is trying to drag the litigation. Learned trial Court considering the matter in its proper perspective, has passed the impugned order. Hence, the same warrants no interference.

5. Upon hearing learned counsel for the parties and on perusal of record, it appears that Annexure-4 is the copy of the petition filed before the learned trial Court to mark certain document as exhibit. Neither the petition discloses about the details or nature of such document nor the purpose for which it

is required to be exhibited that too at the belated stage, i.e., at the stage of argument of the suit. The reason assigned cannot also be acceptable. It further appears from the impugned order that similar such application filed by the Defendant No.1 has already been rejected by the learned trial Court vide its order dated 6<sup>th</sup> July, 2018, which remained unchallenged. Thus, the ratio in *Nilamani Nayak (supra)* is not applicable to this case. In view of the above, I do not find any infirmity in the impugned order.

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

7. Interim order dated 15<sup>th</sup> January, 2019 passed in IA No.1595 of 2018 stands vacated.

Issue urgent certified copy of the order on proper application.

(K.R. Mohapatra)  
Judge