

IN THE HIGH COURT OF ORISSA AT CUTTACK

C.M.P. No.1233 of 2019

Sarif Ahmed Khan @ Sharif Khan ***Petitioner(s)***
Mr. H. Mohanty,
Advocate

-versus-

Safiq Ahmed Khan ***Opposite Party(s)***
Mr. A.K. Mohapatra,
Advocate

CORAM:
JUSTICE BISWANATH RATH

ORDER
02.05.2022

Order No.

03. 1. Learned counsel for the Petitioner submits that when the plaintiff admits, the defendants are in possession of the property, there is no difficulty in granting relief in favour of the defendants. It is contended that there is no denial that there is order of status quo continuing for over four years. Petitioner seeks liberty to go ahead with the construction, however, without claiming any equity on such construction and expenditure therein. For the opinion of this Court, once the petition U/o.39 Rule 1 & 2 gets finally disposed with an order of status quo being confirmed in appeal, in absence of consideration of such prospect, it may be a case U/o.39 Rule 4 of C.P.C. which cannot be taken up in the High Court at the threshold. While declining to interfere in the impugned order this Court observes, if the Petitioner is so advised, may move an application U/o.39 Rule 4 of C.P.C.
2. The C.M.P. is dismissed. It is, however, made clear that dismissal of the C.M.P. shall not be construed to have any

determination on the petition U/o.39 Rule 4 of C.P.C., which, if filed, has to be decided independently.

(Biswanath Rath)
Judge

Ayaskanta Jena

