

IN THE HIGH COURT OF ORISSA AT CUTTACK

CMP No. 963 of 2022

Bijayalaxmi Paikray and others* *Petitioners

Mr. Prafulla Kumar Rath, Advocate

-versus-

Haramani Bairiganjan and others* *Opp. Parties

CORAM:

JUSTICE K.R. MOHAPATRA

ORDER

14.10.2022

Order No.

1. This matter is taken up through hybrid mode.
2. Petitioners in this CMP seek to assail the order dated 13th September, 2022 (Annexure-1) passed by learned Civil Judge (Junior Division), Kanas in TS No.49/178 of 2002/1987, whereby he rejected an application filed by the Petitioners/Defendant Nos. 2(a) to 2(g) and 3(a) to 3(h) under Order VIII Rule 9 CPC to accept the additional written statement.
3. Mr. Rath, learned counsel for the Petitioners submits that the suit has been filed basing upon an earlier partition of the year 1926. After death of Defendant Nos.2 and 3, the Petitioners were substituted in their place. After their substitution, they did not file any written statement and were in fact debarred to file written statement vide order dated 26th July, 2022. While preparing for leading evidence in the suit by the Defendants, it came to light that the sale deed of the year 1931, which was jointly executed by predecessors of the plaintiffs, could not be filed along with the written statement. Hence, they filed an additional written statement to bring the

sale deed in question on record. The said application was rejected vide order under Annexure-1. Hence, this CMP has been filed.

4. Drawing attention of this Court to the provision of Order VIII Rule 1-A (3) CPC, Mr. Rath, learned counsel for the Petitioners submits that a document, which ought to be produced in Court by the defendant under this rule, but, is not so produced shall not, without the leave of the Court, be received in evidence on his behalf at the hearing of the suit. It is his submission that foundation with regard to sale deed in question is available at para-11 of the written statement filed by Defendants. Since the details of the document was not mentioned in the said paragraph, an additional written statement was required to be filed. However, since the foundation of the document is available on record, the Petitioners with leave of the Court can bring the said document (sale deed) on record to be considered at the time of disposal of the suit.

5. In view of the submission made by Mr. Rath, learned counsel for the Petitioners, this Court without expressing any opinion on the merit of his submission, disposes of the CMP with an observation that if an application under Order VIII Rule 1-A(3) CPC is filed to bring on record the document, i.e., the RSD of the year 1931, the same shall be considered in accordance with law giving opportunity of hearing to the parties concerned.

Issue urgent certified copy of the order on proper application.

(K.R. Mohapatra)
Judge