

IN THE HIGH COURT OF ORISSA AT CUTTACK

CMP NO. 985 OF 2022

Amarendra Malik

....

Petitioners

Mr. Niranjana Lenka, Advocate

-versus-

Pramod Malik and others

....

Opp. Parties

CORAM:

JUSTICE K.R. MOHAPATRA

ORDER

19.10.2022

Order No.

1. This matter is taken up through hybrid mode.
2. Order dated 8th September, 2022 (Annexure-7) passed by learned Civil Judge (Junior Division), Kendrapada in I.A. No.200 of 2018 (arising out of C.S. No. 214 of 2018) is under challenge in this CMP, whereby an application filed by the Petitioner for completion of construction of his residential building has been rejected.
3. Mr. Lenka, learned counsel for the Petitioner submits that there was an amicable partition of the property between the parties to the suit. Pursuant to the amicable settlement, measurement was done and the Petitioner started construction of his residential house in December, 2018. Residential building has been constructed up to roof level. While making construction, the Petitioner has never encroached upon the share allotted in favour of Plaintiff-Opposite Party No.1. He is also not obstructing the pathway. However, the Plaintiff without honouring the partition filed C.S. No. 214 of 2018 for partition and other ancillary relief. In the said suit, the Plaintiff-Opposite Party No.1 filed I.A. No. 200 of 2018 for injunction, wherein exercising power under Order XXXIX Rule 3 C.P.C. ex parte ad interim order of injunction has been passed. I.A. No. 200 of 2018 is still pending for

adjudication. Since the construction of residential house of the Petitioner has been made up to roof level, an application was filed for allowing him to complete the construction without claiming any equity over the same. The said application has been rejected by order under Annexure-7. Hence, this CMP has been filed.

4. It is submitted by Mr. Lenka, learned counsel for the Petitioner that before passing of the ex parte ad interim order of status quo on 1st May, 2018, construction of the house Petitioner up to roof level has already been made, which is apparent from the objection filed by the Petitioner to the I.A. No. 200 of 2018. Since the I.A. No. 200 of 2018 could not be disposed of within a reasonable time, the aforesaid application was filed. Learned trial Court failed to appreciate that not allowing the Petitioner for completion of construction will enure to the benefit of none. On the other hand, it will certainly prejudice the Petitioner-Defendant No.2 and will put him to irreparable loss. Hence, he prays for setting aside the impugned order and to permit the Petitioner to complete the construction without claiming any equity over the same.

5. Taking into consideration the submission of learned counsel for the Petitioner and on perusal of the record, it appears that I.A. No. 200 of 2018 filed under Order XXXIX Rules 1 and 2 C.P.C is still pending for consideration.

6. In that view of the matter, the prayer of the Petitioner for completion of construction of residential house of the Petitioner is premature. This Court, however, observes that interest of justice will be best served, if I.A. No. 200 of 2018 is disposed of at an early date.

7. In view of the above, this Court without interfering with the impugned order under Annexure-7 disposes of this CMP with a direction that learned Civil Judge (Junior Division), Kendrapada shall

make an endeavour for early disposal of I.A. No.200 of 2018 giving opportunity of hearing to the parties concerned.

8. It is made clear that this Court has not expressed any opinion on the merits of the order impugned herein under Annexure-7.

Urgent certified copy of this order be granted on proper application.

(K.R. Mohapatra)
Judge

bks

