

IN THE HIGH COURT OF ORISSA AT CUTTACK
CMP No. 1020 OF 2022

Nadini Devi and another ***Petitioners***
Mr. Manoj Mishra, Senior Advocate
being assisted by Mr. Tanmay Mishra, Advocate
-versus-

Brajeswari Devi and others ***Opp. Parties***

CORAM:
JUSTICE K.R. MOHAPATRA

Order No.

ORDER
03.11.2022

2. 1. This matter is taken up through hybrid mode.
2. The Petitioners in this CMP seek to assail the order dated 25th March, 2022 (Annexures-4) in T.S. No.53 of 1981, whereby learned Civil Judge (Senior Division), Berhampur rejected an application dated 23rd March, 2022 filed with a prayer to revive the order dated 24th April, 2022, thereby directing hearing of T.S. Nos. 53 of 1981, 112 of 1979 and 75 of 1980 analogously and also directing the Plaintiffs to deposit Rs.1,000/- before the District Legal Services Authority, Berhampur for wasting the valuable time of the Court.
3. Vide order dated 25th April, 2022 under Annexure-6 learned trial Court rejected an application dated 6th April, 2022 and closed evidence from the side of the Plaintiffs and directed Defendant Nos.2 to 4 to adduce evidence.
4. Mr. Mishra, learned Senior Advocate appearing for the Plaintiffs-Petitioners submits that vide order dated 29th January,

1996 passed in T.S. No.53 of 1981, learned Civil Judge (Senior Division), Berhampur directed analogous hearing of T.S. Nos. 112 of 1979, 75 of 1980 and 53 of 1981. Thereafter, consolidated issues were framed and consolidated evidence was also recorded in all the three suits. The problems started on 4th March, 2022, when learned trial Court raised a doubt with regard to consolidated hearing of all the aforesaid three suits and directed the Plaintiffs to file affidavit specifying the date and the order directing common trial in all the suits. It is submitted that although the Plaintiffs in their petition dated 23rd March, 2022 filed the order sheet dated 29th January, 1996 passed in T.S. No.53 of 1981 directing analogous hearing of the aforesaid three suits and prayed for revival of the order dated 24th April, 2021 for analogous hearing of all the three suits, but learned trial Court vide its order dated 25th March, 2022 under Annexure-4 rejected the application holding it to be vexatious and directed the Plaintiffs to deposit Rs.1,000/- before the District Legal Services Authority, Berhampur for wasting time of the Court. It was further made clear in the said order that the Plaintiffs shall comply with the direction of the Court passed on 4th March, 2022 and deposit the cost, failing which the Plaintiffs would lose the right to participate in the proceeding of the Court. Thereafter, an application dated 6th April, 2022 was filed to accept the application supported by affidavit for non-compliance of the order dated 4th March, 2022 and 25th March, 2022 and to take up analogous hearing of all the three suits. Said application was rejected vide order dated 25th April, 2022 under Annexure-6

being devoid of any merit and the evidence of the Plaintiffs were closed and the Defendant Nos.2 to 4 were directed to adduce evidence in the suit. Hence, being aggrieved by the aforesaid order, this CMP has been filed.

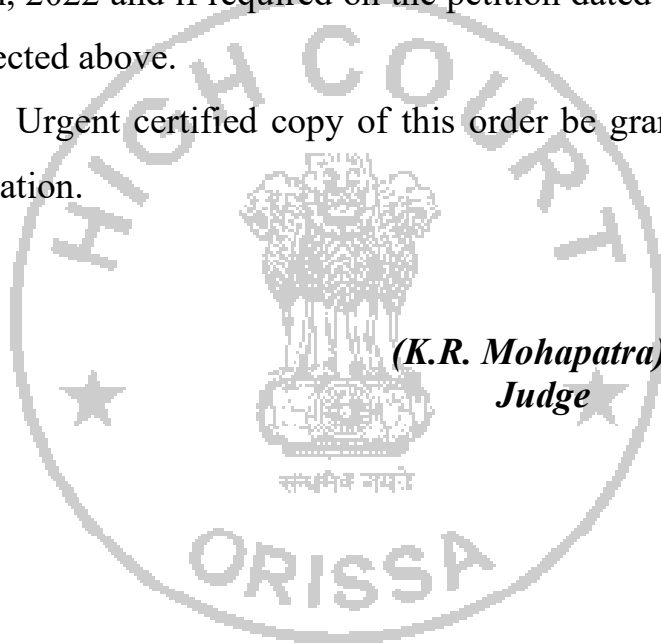
5. On perusal of the certified copy of the order dated 29th January, 1996 passed in T.S. No.53 of 1981 annexed to the CMP as Annexure-1, it is clear that learned Civil Judge (Senior Division), Berhampur had allowed an application for analogous hearing of T.S. Nos. 53 of 1981, 112 of 1979 and 75 of 1980. Thereafter, all the suits were heard analogously and common set of evidence was recorded, as submitted by Mr. Mishra, learned Senior Advocate for the Plaintiffs-Petitioners. Thus, instead of resorting to hyper technicalities, learned trial Court ought to have verified the order sheet in T.S. No.53 of 1981, more particularly, the order dated 29th January, 1996 before passing the impugned order. As it appears that the problem arose due to a doubt raised by learned trial Court for analogous hearing of all the aforesaid suits. If consolidated issues were settled in all the three suits and consolidated evidence have been recorded in the aforesaid suits, there might be no difficulty on the part of learned trial Court to proceed with the matter and take up hearing of all the three suits analogously. It is, however, subject to any further order varying or modifying the order dated 29th January, 1996. Thus, this Court is of the considered opinion that the matter requires fresh consideration by learned trial Court.

6. Accordingly, the impugned orders under Annexures-4 and 6 are set aside. The matter is remitted back to learned trial

Court for fresh adjudication of the petition dated 23rd March, 2022 and if required, the petition dated 6th April, 2022, giving opportunity of hearing to the parties concerned and on verification of record.

7. It is made clear that this Court has not expressed any opinion on the merits of the case of the Petitioners. However, learned trial Court shall proceed with the suit (T.S. No.53 of 1981) after taking a fresh decision on the petition dated 23rd March, 2022 and if required on the petition dated 6th April, 2022 as directed above.

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



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