

IN THE HIGH COURT OF ORISSA AT CUTTACK
CMP NO.1025 OF 2022

Sandipta Kumar Das

....

Petitioner

Mr. Bibekananda Bhuyan, Advocate

-versus-

State of Odisha and others

....

Opp. Parties

Mr. A.R. Dash,
Additional Government Advocate

CORAM:
JUSTICE K.R. MOHAPATRA

Order No.

ORDER
02.11.2022

1. This matter is taken up through hybrid mode.
2. The Petitioner in this CMP seeks to assail the order dated 28th September, 2022 (Annexure-5) passed by learned Civil Judge (Senior Division), Kujang in C.S. No. 262 of 2022, whereby an application filed by him under Section 80(2) C.P.C. has been rejected.
3. Mr. Bhuyan, learned counsel for the Petitioner submits that the suit land pertains to Plot No. 755 under Khata No. 19 of mouza Panapalli under Kujang P.S. in the district of Jagatsinghpur. The Petitioner is running a LPG Godown over Plot No. 755 by obtaining permission from the competent authority. In terms of the order dated 1st March, 2019 passed by this Court in W.P.(C) No. 16696 of 2018, the Petitioner therein filed a representation before the Collector, Jagatsinghpur. Further, a direction has also been issued by this Court in W.P.(C) No. 26859 of 2019. Upon consideration of the direction, the Collector, Jagatsinghpur initiated Misc. Case No. 15 of 2019 on his file and issued notice to the Petitioner to appear before him on 8th

September, 2022 at 10 A.M. Since the matter relates to eviction of the Petitioner and on verification of the record, he found that in the lease deed executed in his favour by other family members, Plot No.763 has been inadvertently mentioned as Plot No.755, he apprehends that contesting the Misc. Case before the Collector, Jagatsinghpur may not yield any result in favour of the Petitioner. In that view of the matter, it was expedient on the part of the Petitioner to file a suit for correction of Plot No. 763 in the lease deed. As there was urgency in the matter, the Petitioner also filed an application under Section 80(2) C.P.C. to dispense with service of notice under Section 80(1) C.P.C. and to admit the suit. He further submits that in view of the provision under Section 80(2) C.P.C., no interim order of injunction can be granted unless the Officers/Authorities of the State Government and their functionaries are given an opportunity of hearing. Hence, there was no difficulty in entertaining an application under Section 80(2) C.P.C. and admitting the suit. Learned trial Court raising a doubt with regard to conduct of the Petitioner in not producing the copies of the orders passed in the aforesaid writ petitions and non-explanation of the period from 8th February, 2022 till 28th September, 2022 has refused to entertain the application. In view of urgency in the matter, the suit was filed along with an application under Section 80(2) C.P.C., but learned trial Court failed to appreciate the urgency involved in the suit and adhering to the hyper technicalities dismissed the application. Hence, this CMP has been filed.

4. Mr. Dash, learned Additional Government Advocate appearing for Opposite Party Nos. 1 and 2 submits that learned trial Court has committed no error in rejecting the application under

Section 80(2) C.P.C. as the Petitioner failed to bring to the notice of the Court the nature of urgency in the matter. The cause of action for filing of the suit arose on initiation of the misc. case by the Collector, Jagatsinghpur. Initiation of such misc. case was pursuant to the orders passed by this Court, which were not produced before learned trial Court. Further, the case law relied upon by Mr. Bhuyan, learned counsel for the Petitioner relates to an order under Order XXXIX Rules 1 and 2 C.P.C. As such, the same has no application to the present case. In that view of the matter, the CMP merits no consideration.

5. Upon hearing learned counsel for the parties and on perusal of the record, it appears that learned trial Court has taken exception to the fact of non-production of the orders passed in the aforesaid writ petitions. Mr. Bhuyan, learned counsel submits that the Petitioner is ready to produce the orders passed by this Court in the aforesaid writ petitions, if another opportunity is given to the Plaintiff-Petitioner. Further, appearance before the Collector, Jagatsinghpur pursuant to the notice in Misc. Case No. 15 of 2019 will be an empty formality, unless an appropriate order is passed by the Civil Court.

6. In view of the submissions made by learned counsel for the parties, this Court is of the considered opinion that when the Plaintiff-Petitioner is ready to produce the orders passed by this Court in the aforesaid two writ petitions, an opportunity should be given to them for the same. Accordingly, the impugned order under Annexure-5 is set aside and the matter is remitted back to the learned Civil Judge (Senior Division), Kujang for adjudication of the petition under Section 80(2) C.P.C. afresh, giving opportunity of hearing to the parties concerned.

7. It is made clear that this Court has not expressed any opinion on the merits of the case of the Petitioner.

8. With the aforesaid observation and direction, the CMP is disposed of.

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

(K.R. Mohapatra)
Judge

bks

