

IN THE HIGH COURT OF ORISSA AT CUTTACK

CMP No. 1050 OF 2022

Rabindra Mohan Parida and others* *Petitioners

Mr. Debendra Kumar Sahoo, Advocate

-versus-

Parsuram Parida and others* *Opp. Parties

CORAM:

JUSTICE K.R. MOHAPATRA

ORDER

15.11.2022

Order No.

01. 1. This matter is taken up through hybrid mode.
2. The Petitioners in this CMP seek to assail the order dated 25th April, 2022 (Annexure-9) passed by learned Civil Judge, Balasore in C.M.A. No.277 of 2015 (arising out of C.S. No.182 of 1989), whereby an application filed by the Petitioners to recall the order dated 8th March, 2019 (Annexure-7) permitting the Opposite Parties to cross-examine C.W.1 has been rejected.
3. Mr. Sahoo, learned counsel for the Petitioners submits that the Opposite Parties had filed C.S. No.182 of 1989 for declaration of right, title, interest and possession as well as for permanent injunction. Although prayer with regard to declaration of right, title and interest was refused, but the suit was decreed in part, permanently injunctioning the Defendants from entering upon the suit land. The suit was decreed *ex parte* against Defendant No.4, namely, Rajkishore Parida. In the meantime, said Rajkishore Parida died. Thus, the legal heirs (present Petitioners) of late Rajkishore Parida filed application under Order IX Rule 13 C.P.C. in C.M.A. No.277 of 2015 for setting aside the *ex parte* decree against them. In the said

proceeding, the process server has been examined as C.W. 1. He has also been cross-examined by the present Petitioners. But, on the date fixed, the Plaintiffs-Opposite Parties in the suit could not cross-examine C.W.1, for which they filed an application to recall C.W.1 for cross-examination. The said application was allowed vide order dated 8th March, 2019 under Annexure-7. Subsequently, the Defendants-Petitioners filed an application to recall the said order, which has been rejected vide order under Annexure-9, which is impugned herein. Hence, this CMP has been filed.

4. Mr. Sahoo, learned counsel for the Petitioners submits that since the process server has led evidence in support of the case of Plaintiffs-Opposite Parties, there was nothing to cross-examine the said witness. Allowing the Plaintiffs to cross-examine C.W.1 will not only linger the proceeding, but also it may demolish the cross-examination made by the present Petitioners. Hence, such an application should not have been allowed.

5. He further submitted that order dated 8th March, 2019 under Annexure-7 is not supported by reasons. The aforesaid material aspects were not taken into consideration by learned Civil Judge while adjudicating the application for recalling the order dated 8th March, 2019 under Annexure-7. Hence, the impugned order under Annexure-9 is not sustainable in the eyes of law and is liable to be set aside.

6. Upon hearing learned counsel for the Petitioner and on perusal of the record, it is apparent that C.W.1 is the process server, who allegedly served notice on the father of the present Petitioners, namely, late Rajkishore Parida. He has been

examined as witness on behalf of the Court as C.W.1. It also reveals that the present Petitioners have cross-examined the said witness. As the process server has been examined as Court witness, the Plaintiffs-Opposite Parties has every right to cross-examine him. On the date fixed for cross-examination, the Opposite Parties could not cross-examine the said C.W.1, for which an application was filed to recall the said witness for cross-examination. Learned trial Court allowed the said application by permitting the Opposite Parties to cross-examine C.W.1. Subsequently, an application was filed by the Petitioners to recall the said order.

7. On perusal of the impugned order under Annexure-9, I find no infirmity in rejecting said application, more particularly, when the Court, in order to facilitate proper adjudication of the petition under Order IX Rule 13 C.P.C., has permitted the Opposite Parties to cross-examine the C.W.1. As such, the impugned order under Annexure-9 warrants no interference.

8. Accordingly, this CMP being devoid of any merit stands dismissed.

9. Since the suit is of the year, 1989 and CMA is pending since 2015, learned trial Court should make an endeavour for early disposal of the same giving opportunity of hearing to the parties concerned. Parties are directed to cooperate with learned trial Court for early disposal of C.M.A. No.277 of 2015.

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

(K.R. Mohapatra)
Judge