

IN THE HIGH COURT OF ORISSA AT CUTTACK

CMP NO. 1063 of 2022

Nilambar Seth and others* *Petitioners

Mr. Sushanta Kumar Joshi, Advocate

-versus-

Dhubuni Seth* *Opp. Party

CORAM:

JUSTICE K.R. MOHAPATRA

ORDER

09.11.2022

Order No.

1. This matter is taken up through hybrid mode.
2. Petitioner in this CMP seeks to assail the order dated 30th August, 2022 (Annexure-3) passed by learned Additional District Judge, Padampur in RFA No.5/82 of 2012-13, whereby an application under Order XLI Rule 5 CPC has been rejected.
3. Mr. Joshi, learned counsel for the Petitioner submits that the Opposite Party had filed CS No.6 of 2010 for partition mesne profit. The said suit was decreed allotting half share of the suit property in favour of the Opposite Party and also holding that he is entitled to Rs.14,000/- towards mesne profit. Subsequently, the Opposite Party filed another suit, i.e., CS No.46 of 2014 for realization of mesne profit, which is pending for consideration. Assailing the judgment and decree passed in CS No.6 of 2010, the Defendant/Petitioner preferred RFA No.5 of 2012, which was subsequently transferred to the Court of learned Additional District Judge, Padampur and registered as RFA No.5/82 of 2012-13. During pendency of the appeal, the Petitioner filed an application for stay of further proceeding of CS No.46 of 2014, which has been rejected vide order under Annexure-3. Assailing the said order, this CMP has been filed.

It is his submission that disposal of CS No.46 of 2014 depends upon the result of the RFA pending before learned Additional District Judge, Padampur. Hence, further proceeding in CS No.46 of 2014 should be stayed.

4. Upon hearing learned counsel for the Petitioner and on perusal of record including the impugned order, it appears that the Petitioner had earlier filed an application for stay of further proceeding in CS No.46 of 2014, which was rejected vide order dated 21st April, 2016. Although it is submitted by Mr. Joshi, learned counsel that assailing the same, the Petitioner had filed CMP No.885 of 2017, which was disposed of on 16th August, 2017 with a direction to approach learned appellate Court for the self-same relief, but nothing with regard to the same is disclosed in the said CMP. Learned counsel for the Petitioner also does not produce copy of the said order.

4.1 Further, it appears that CS No.46 of 2014 has been filed claiming for mesne profit from the year 2011 to 2013 and CS No.6 of 2010 relates to mesne profit of the year 2009. Hence, continuance of the further proceeding in CS No.46 of 2014 has got no bearing on RFA No.5/82 of 2012-13, as rightly observed by learned appellate Court. In that view of the matter, I find no infirmity in the impugned order.

5. Accordingly, the CMP being devoid of any merit stands dismissed.

6. Since the appeal is of the year 2012-13, the Petitioner is directed to cooperate with learned appellate Court for early disposal of the appeal.