

IN THE HIGH COURT OF ORISSA AT CUTTACK
CMP No.612 of 2021

Kapala Balaji

....

Petitioner(s)

Mr. R.K. Mohanty,
Sr. Advocate

-versus-

Epili Pandaba & Ors.

....

Opposite Party(s)

CORAM:
JUSTICE BISWANATH RATH
ORDER
03.01.2022

Order No.

1. 1. This Civil Miscellaneous Application arises out of rejection of an application U/o. 26 rule 9 of C.P.C. for sending a Survey Knowing Commissioner to have measurement of the disputed property in question. Taking care of the submission of Mr. Mohanty, learned Sr. Advocate, this Court finds, through the pleadings in the plaint vide Civil Suit No.17 of 2015 the Plaintiff has made the clear pleadings in paragraph nos.6 & 7.

“6. That after completion of demarcation work, the R.I. informed the fact of demarcation to the Tahasildar Digapahandi vide letter no.23/ dated 26-03-2014. Thereafter the plaintiff left for Bhubaneswar to earn his livelihood at the end of June, 2014. After his return from Bhubaneswar in the month of February 2015 being informed by family members about unauthorized construction made by the defendant no.1 after illegal encroaching of the suit land towards western side, similarly the defendant no.2 to 5 also illegally fencing towards eastern side width towards back of the plaintiff's land, he then vamentlly protested and asked the

defendants to remove the encroachment portion of the suit land at their own cost and to maintain the status of the suit land as determined and identified by the R.I. at the time of demarcation made in presence of both the parties and witness.

7. That in such circumstances it is necessary to appoint survey knowing commissioner to demarcate the suit land and to detect the actual measurement of the encroached portion of the suit land as encroached by the defendant no.1 and 2 to 5 as per settlement map. The plaintiff is also ready to bear the cost for demarcation.

7.(A) That while the case is pending before this Court and subsequently at District Court, the defendant no.1 filed a mutation application before the Mutation officer at Digapahandi to be mutated his purchased extent of land relating to Hal plot no-4616 of Mouza-Digapahandi and same is Numbered as M.C 2357/2015. The revenue officer after came to know the facts of pending of civil suit returned the same for passing necessary order before the Tahasildar Digapahandi on dated 16/11/2015, but again on dated 22/04/2016 the record is sent to revenue officer Digapahandi for demarcation and send it fresh for disposal by the mutation officer.

That after receiving the mutation record from the office of the Tahasildar Digapahandi, R.I. Digapahandi fixed date on 22/6/2016 for demarcation and enquiry, subsequently the revenue officer on day fixed enquired about the area of defendant no.1 in his presence and presence of local public and came to know that defendant no.1 possessed Hal Plot-4616 along with encroached some area of hal Plot no-4617 (Belongs to Plaintiff). Accordingly revenue inspector draw a trace map by making encroached portion by the defendant no.1 over plaintiff's land and send the mutation case of defendant no.1 to the mutation officer Digapahandi for taking necessary action. And same is come into knowledge of the plaintiff after obtaining certified copy of the same."

2. On reading of both the aforesaid paragraphs there remains no doubt that the disputed property has not only been demarcated and identified by the R.I. in presence of both the parties, but for the clear pleadings, there should also not be any doubt that the case of the Plaintiff can very well be fought through the R.I. report. It is in this view of the matter and for there is already identification of disputed property by the competent R.I. this Court does not find any necessity of filing of an application under order 26 rule 7 of C.P.C. Perused the impugned order. For the findings of this Court and observation made herein, this Court finds no infirmity in the impugned order to be interfered with.

3. The Civil Miscellaneous Petition thus stands dismissed.

(Biswanath Rath)
Judge

Ayaskanta Jena

