

IN THE HIGH COURT OF ORISSA AT CUTTACK

CMP No. 1150 of 2022

Baidhar Bal

....

Petitioner

Mr. Niranjana Lenka, Advocate

-versus-

Pratibha Muduli and another

....

Opp. Parties

CORAM:

JUSTICE K.R. MOHAPATRA

ORDER

16.12.2022

Order No.

1. This matter is taken up through Hybrid mode.
2. Order dated 9th September, 2022 (Annexure-5) passed by learned 1st Additional Senior Civil Judge, Cuttack in CS No.517 of 2013 is under challenge in this CMP, whereby an application filed by the Petitioner on 27th January, 2021 under Order XIX Rule 3 CPC to reject the evidence in affidavit filed by PW-1 has been dismissed.
- 3 Mr. Lenka, learned counsel submits that PW-1, namely, Dushasan Muduli is the Power of Attorney of the Plaintiff No.1. Thus, he cannot file evidence in affidavit, making statement, which is not in his personal knowledge. But the PW-1 has filed evidence in affidavit under Order XVIII Rule 4 CPC stating the averments made in the plaint as if he is examined as Plaintiff. Learned trial Court, allowed the application holding that since PW-1 has been allowed to lead evidence vide order dated 17th March, 2020, he cannot be prevented to file affidavit under Order XVIII Rule 4 CPC and the affidavit filed cannot be rejected.

4. It is not disputed that the PW-1 was allowed vide order dated 17th March, 2020 to lead evidence on behalf of the Plaintiff. Hence, evidence in-chief was filed by PW-1, who is Power of Attorney of Plaintiff No.1. Law is well-settled that a Power of Attorney can only lead evidence, which is within his knowledge. He cannot be examined as a witness in the capacity of the principal. If the Defendant /Petitioner is of the opinion that some of the statements made in evidence in-chief, were not in the knowledge of PW-1, it is open for him to confront the same to such witness in his cross-examination. Moreover, it is not disputed that the Power of Attorney has been permitted to be examined on behalf of the Plaintiff by the learned trial Court vide order dated 17th March, 2020, which remained unchallenged. In that view of the matter, I find no infirmity in the impugned order.

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

(K.R. Mohapatra)
Judge