

IN THE HIGH COURT OF ORISSA AT CUTTACK

CMP No. 1196 of 2022

Swadesh Kumar Routray and others* *Petitioners

Mr. Banshidhar Baug, Advocate

-versus-

Purna Chandra Mohanty and others* *Opp. Parties

Mr. Swayambhu Mishra,
Additional Standing Counsel
(For Opposite Party No.4)

**CORAM:
JUSTICE K.R. MOHAPATRA**

**ORDER
12.12.2022**

Order No.

1. This matter is taken up through Hybrid mode.
2. Memo along with certified copy of order dated 21st November, 2022 filed in Court is taken on record.
3. Grievance of the Petitioners in this CMP is with regard to refusal of learned Presiding Officer in recording the objection raised by the Petitioners with regard to irrelevant questions to OPW-1 in his cross-examination in IA No.1 of 2022 (arising out of CS No.502 of 2022) pending before learned 2nd Additional Civil Judge (Senior Division), Bhubaneswar.
4. Mr. Baug, learned counsel for the Petitioner submits that CS No.502 of 2022 has been filed for partition. In the said suit, an application in IA No.1 of 2022 has been filed by the Plaintiff/Opposite Party No.1. The Petitioner had to approach this Court earlier in CMP No.724 of 2022 when learned trial Court refused their prayer to adduce evidence in the IA. This Court, while disposing of the said CMP, vide order dated 17th August, 2022, directed as under:-

“4. Taking into consideration the submission made by learned counsel for the Petitioner and that the Petitioner wants to lead evidence in IA No.1 of 2022 filed by the Plaintiff under Order XXXIX Rules 1 and 2 CPC, this Court feels that the same should have been allowed. Law is well-settled that materials produced including the oral evidence at the time of adjudication of interlocutory application cannot be considered as evidence during adjudication of the suit. Since Defendant No.7 wants to lead evidence for adjudication of the IA, learned trial Court should have allowed the same, unless there is any compelling circumstance to deny it.

5. In view of the above, this Court without, issuing notice to the Opposite Parties, sets aside the impugned order under Annexure-5 and directs learned trial Court to allow the Defendant No.7/Petitioner to lead evidence in IA No.1 of 2022. It is further made clear that parties to the said IA, if asked for, may also be allowed to lead evidence in the matter. However, the IA should not be unnecessarily adjourned for leading evidence.”

Accordingly, evidence is being recorded in IA No.1 of 2022, but while cross-examining OPW-1, several irrelevant questions were put to the witness and objection to that effect was not paid any heed by the learned trial Court.

5. Mr. Baug, learned counsel referring to provisions of Order XVIII Rule 11 CPC submits that the objections raised should be considered instantaneously and noted in the deposition itself. That having not been done, Petitioners, who are Opposite Party Nos.1 and 4 to 7, are seriously prejudiced. In course of hearing, Mr. Baug, learned counsel filed certified copy of order dated 21st November, 2022 and submits that learned trial Court has directed the Petitioners to file written objection to the cross-examination of OPW-1. It is his submission that no written objection is required to be filed as OPW-1 is not aware of the question(s) to be put to him. In that view of the matter, he prays for a direction to learned trial Court

to record its objection in adherence to the provision under Order XVIII Rule 11 read with Section 141 CPC.

6. Considering the submission made by learned counsel for the Petitioners and keeping in mind that the petition under Order XXXIX Rules 1 and 2 CPC is under consideration, which requires expeditious disposal, this Court disposes of the CMP with an observation that after recording of the statement of OPW-1 to the questions/suggestions put to him, if Defendant Nos. 1 and 4 to 7 have any objection to the same, they may file the same in writing on the date of examination of the witness serving copy thereof on the party putting such questions/suggestions and the same shall be taken care of at the time of hearing of the petition under Order XXXIX Rules 1 and 2 CPC.

7. Since the order is passed without any notice to Opposite Parties, they are at liberty to move for variation of this order, if they feel aggrieved.

Issue urgent certified copy of the order on proper application.

(K.R. Mohapatra)
Judge