

IN THE HIGH COURT OF ORISSA AT CUTTACK

CMP NO. 1221 OF 2022

Surendra Kumar Tibarewalla and Petitioners
another

Mr. Banshidhar Baug, Advocate

-versus-

Jugal Kishore Das and others Opp. Parties

CORAM:
JUSTICE K.R. MOHAPATRA

ORDER
07.12.2022

Order No.

1. This matter is taken up through hybrid mode.
2. The Petitioners in this CMP seek to assail the order dated 29th November, 2022 passed in I.A. No.1 of 2022 (arising out of C.S. No.1032 of 2022), whereby learned Civil Judge (Senior Division), First Court, Cuttack while refusing to grant ad-interim order of injunction, directed to issue notice to all the Opposite Parties except Opposite Party No.2.
3. Mr. Baug, learned counsel for the Petitioners submits that a piece of 'Nayanjori' land has been leased out in favour of Opposite Party No.2, namely, Sikhya Anusandhan, by which it is compelling the Petitioners to take away their land. Hence, C.S. No.1032 of 2022 has been filed for permanent injunction, confirmation of possession and in the alternative for recovery of possession. Along with the Plaint, the Petitioners also filed an application under Order XXXIX Rule 3 C.P.C. to dispense with service of notice on the Opposite Parties and to entertain the interim application by passing an *ex parte* ad-interim order of

injunction. Learned trial Court by passing an ambiguous order on 29th November, 2022 directed to issue notice to all the Opposite Parties except Opposite Party No.2. But, on perusal of the impugned order itself, it shows that no order of *ex parte* ad-interim order of injunction has been passed. Hence, he prays for setting aside the impugned order and to pass an *ex parte* ad-interim order of injunction against all the Opposite Parties.

4. On perusal of the order sheet, it appears that notice has been issued to the Opposite Parties by special messenger vide order dated 29th November, 2022 and the matter is posted to 9th December, 2022 for S.R. and P.A.

5. In that view of the matter, this Court directs that learned trial Court shall take steps to consider the I.A. No.1 of 2022 filed under Order XXXIX Rules 1 and 2 C.P.C. either within three days from the date of service of notice on the Opposite Parties or by adjourning the matter to a short date not later than seven days therefrom, giving opportunity of hearing to the parties.

6. With the aforesaid observation and direction, the CMP is disposed of.

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

(K.R. Mohapatra)
Judge

bks