

IN THE HIGH COURT OF ORISSA AT CUTTACK

CMP No.723 of 2021

Sk.Noor Mahammad

.... Petitioner
Mr.P.K.Rath, Advocate

-versus-

Sk.Abdul Rahman & others

.... Opp. Parties

CORAM:

JUSTICE A.K. MOHAPATRA

ORDER

19.01.2022

Order No.

1. This matter is taken up through Video Conferencing mode.
2. Heard Mr.P.K.Rath, learned counsel for the Petitioner.
3. The sole grievance of the Petitioner in this CMP application is that both the Courts below considering the fact that the construction has progressed substantially over an area of 269 sq.ft. corresponding to Plot No.1936 have restrained the opposite parties not to disturb the possession of the Petitioner over the plot in question. The Petitioner as well as the Opposite Parties belong to one family and the suit out of which this order arises is a suit for partition involving the partition of joint family properties. Mr.Rath, fairly submits that the petitioner is entitled to 1/6th share in the joint family properties.
4. Mr.Rath, learned counsel for the Petitioner further submits that if the construction which is going on is confined to 1/6th share of the Petitioner in the joint family property i.e. an area of 2.6 dec. of land, then he will have no objection to the construction made by the Opposite parties subject to other conditions as laid down by the courts below in the impugned order.

5. In such view of the matter, this Court without interfering with the injunction order, disposes of the CMP application with a clarification that the construction which is going on at the instance of the opposite parties shall be confined to their share of the property only i.e. in respect of 2.6 dec. of land (269 sq.ft.) as indicated in the order of the learned Court below and further it is made clear that under no circumstances, the Opposite parties shall exceed 269 sq.ft. area over which construction has been allowed by the learned court below and construction so made shall abide by the final outcome of the suit.

6. With the aforesaid observation the CMP is allowed.

7. As the restrictions due to resurgence of COVID -19 situation are continuing, learned counsel for the parties may utilize a print out of the order available in the High Court's website, at par with certified copy, subject to attestation by the concerned Advocate, in the manner prescribed vide Court's Notice No.4587, dated 25th March, 2020, modified by Court's Notice No.4798, dated 15th April, 2021, and Court's Office Order circulated vide Memo Nos.514 and 515 dated 7th January, 2022.

RKS

(**A.K. Mohapatra**)
Judge