IN THE HIGH COURT OF ORISSA AT CUTTACK
CMP No.470 of 2026

Prasant Pradhan @ Prasanta Kumar Pradhan ..... ***Petitioner***

Represented by Adv. –
Mr. Umakanta Barik

-versus-

Jahira Khan and another ..... ***Opposite Parties***

CORAM:
THE HON'BLE MR. JUSTICE ADITYA KUMAR MOHAPATRA
ORDER
09.04.2026

Order No.

01. 1. This matter is taken up through Hybrid Arrangement (Virtual /Physical Mode).

2. Heard the learned counsel for the Petitioner. Perused the CMP application as well as the prayer made therein.

3. The Petitioner, who happens to be the Defendant No.1(a) in C.S. No.100 of 2019 pending in the court of learned Civil Judge (Senior Division), Khariar, has approached this Court by filing the present CMP application under Article 227 of the Constitution of India thereby challenging the impugned order dated 12.02.2026 at Annexure-3 to the CMP application.

4. By virtue of the impugned order dated 12.02.2026, the learned trial court has rejected the Defendants' application filed under Order-26 Rule-9 of the C.P.C. for appointment of Amin

Commissioner for identification of the disputed passage.

5. Learned counsel for the Petitioner-Defendant No.1(a), at the outset, contended that the Plaintiff initially filed a suit for injunction simpliciter. As per the claim of the Plaintiff in his plaint, the suit plot is a road. Such assertion of the Plaintiff is being denied by the Defendants stating that there exists no road over the suit plot. During the trial, while evidence was being recorded, an application was moved from the side of the Defendants under Order-26 Rule-9 of the C.P.C. for engagement of the Amin Commissioner. Such prayer having been rejected by the learned trial court vide order dated 12.02.2026 under Annexure-3, the Petitioner has approached this Court by filing the present CMP application. Learned counsel for the Petitioner, at this juncture, contended that it is necessary to appoint an Amin Commissioner for identification of the suit plot as the same is necessary considering the insistence from both sides with regard to the suit plot being used as a road.

6. On a careful analysis of the materials on record as well as the submission made by the learned counsel for the Petitioner, this Court observes that the dispute in the suit is confined to the determination of the question as to whether the suit plot is a road or not. From the argument advanced by the learned counsel for the Petitioner, it appears that the suit is at trial stage and evidence is being recorded. Although there is no bar with regard to engagement of an Amin Commissioner at any stage of the dispute, however the same is subject to the discretion of the learned trial court. In the instant case, learned trial court found that engagement of a

Commission is not necessary at this stage and that there is no confusion with regard to the boundary and that the description of the suit scheduled land, as has been mentioned by the Defendants in para-7 of their written statement, can be utilized. In such view of the matter, this Court is of the view that the trial court has not committed any illegality in passing order dated 12.02.2026. Accordingly, this Court is not inclined to interfere with the order dated 12.02.2026.

7. While disposing of the present CMP application, liberty is granted to the Petitioner to move another application under Order-26 Rule-9 of C.P.C after closure of the evidence. In such eventuality, the trial court shall consider the same strictly in accordance with law as well as keeping in view the judgment of this Court in ***(Smt.) Surekha Tripathy v. Smt. Nirmala Pattnaik***, reported in ***2018 (II) CLR - 887*** and on the basis of the necessity to engage such Amin Commissioner for identification, location and/or measurement of the land in dispute in the suit.

8. With the aforesaid observation and direction, the CMP stands disposed of.

(A.K. Mohapatra)
Judge

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