IN THE HIGH COURT OF ORISSA AT CUTTACK
CMP No.1260 of 2026
CNR No. ODHC010569372026

Nadia Gahir ..... ***Petitioner***

Represented by Adv. - Debabrata Dash

-versus-

Gayatri Gahir & Ors. ..... ***Opposite Parties***

Represented by Adv. - M/s Akash Kumar Pattajoshi, A.Bbehera, A.Pattnayak

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

ORDER

Order No. **27.10.2026**

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

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

3. By filing the present application under Article 227 of the Constitution of India, the Petitioner, who is a stranger to C.S. No.174 of 2024, disposed of by the learned Civil Judge (Senior Division), Bhawanipatna, has approached this Court challenging the order dated 05.05.2026 passed in CMA No.23 of 2026, arising out of an application filed by the Petitioner under Section 47 of the CPC, resisting the delivery of possession.

4. Learned counsel for the Petitioner, at the outset, contended that

the late husband of the present Petitioner although a recorded owner in respect of the suit scheduled property, he was, however, never arrayed as a defendant to the suit. He further contended that the suit was decreed in the meantime. Thereafter, the plaintiffs filed an execution case bearing Execution Case No.1 of 2026 in the Court of learned Civil Judge, Senior Division, Bhawanipatna. During execution of the decree in the abovenoted execution case, the possession of the Petitioner was likely to be affected by such execution. Accordingly, the Petitioner moved an application under Section 47 of the CPC which was registered as CMA No.23 of 2026. Such application of the Petitioner under Section 47 of the CPC having been considered and rejected by the learned Executing Court by virtue of the impugned order dated 05.05.2026 at Annexure-5, the Petitioner has approached this Court by filing the present CMP application.

5. Learned counsel for the Opposite Parties, on the other hand, contended that the Petitioner was neither a party to the suit nor to the execution case. He further contended that the Petitioner happens to be the widow of the late Chatura Goud, who was a defendant to the previous suit between the parties. He further contended that so far the present suit is concerned (Civil Suit No.174 of 2024), the present Petitioner is not a defendant. In such view of the matter, learned counsel for the Petitioner contended that since the Petitioner is not a necessary party to the subsequent suit and that she has not been arrayed as a defendant in the subsequent suit, the application under Section 47 of the CPC filed at the instance of the present Petitioner in not maintainable. On such ground, learned counsel for the Opposite Parties contended that the learned trial court has not committed any illegality in rejecting the Petitioner’s prayer by virtue of the

impugned order dated 05.05.2026, at Annexure-5. In view of the aforesaid position, learned counsel for the Opposite parties contended that the present CMP application is not maintainable. Hence, the same should be dismissed at threshold.

6. Having regard to the submissions made by the learned counsel appearing for both sides, on a careful examination of the background facts and on a close scrutiny of the impugned order dated 05.05.2026 at Annexure-5, this Court found that the learned Executing Court while adjudicating CMA No.23 of 2026 filed under Section 47 of the CPC at the instance of the Petitioner has come to a specific conclusion that the present Petitioner is not a party to the suit. Moreover, the learned Executing Court has also observed that it has no scope and authority to go beyond or behind the decree. Although, the learned Executing Court has made an observation that the Petitioner is not in possession over the suit land which has already been declared by the said court in the previous suit bearing C.S. No.38 of 2015 by confirming the possession of the predecessor of the plaintiff, this Court feels that such observation uncalled for at the stage. Considering the fact that the Petitioner was not a party to the subsequent suit out of which the present execution proceeding arises, this Court is of the view that the question of maintainability of the objection filed by the Petitioner under Section 47 of the CPC requires consideration in accordance with law. While saying so, this Court is also conscious of the fact that there are other provisions under Order 21 which take care of such a scenario and gives right to the person who is likely to be affected during execution.

7. In view of the aforesaid position, the present CMP application is being disposed of by granting liberty to the Petitioner to move an

appropriate application under Order 21 of the CPC in the event the Petitioner is so advised. In the event any such application is filed, the same shall be considered on its own merits without being influenced by the observations made by the learned Executing Court by virtue of the impugned order dated 05.05.2026 at Annexure-5 and after providing an opportunity to all persons. Further, liberty is granted to the Petitioner to move an interim application before the learned trial court along with the appropriate application under Order 21 of the CPC. In such eventuality, the learned trial court shall consider the same keeping in view the urgency involved in the matter and make every endeavour to dispose of the application at the earliest.

8. With the aforesaid observations and directions, the CMP stands disposed of.

(A.K. Mohapatra)

Judge

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