IN THE HIGH COURT OF ORISSA AT CUTTACK
CMP No.1819 of 2026
CNR No. ODHC010799252026

Bharat Chandra Jena ..... ***Petitioner***

Represented by Adv. -
Ranjit Mohanty

-versus-

Sarat Chandra Jena & Ors. ..... ***Opposite Parties***

Represented by Adv. -

CORAM:
MR. JUSTICE ADITYA KUMAR MOHAPATRA

ORDER
19.11.2026

Order No.

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

2. Heard learned counsel for the Petitioner. 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 defendant in C.S. No.287 of 2023 pending in the Court of learned Civil Judge, Senior Division, Kendrapara, has approached this Court thereby challenging the impugned order dated 29.09.2026 at Annexure-3 to the CMP application. By virtue of the impugned order at Annexure-3, the learned trial court has rejected the Defendant No.1's application filed under Order 26 Rule 9 of the CPC dated 28.09.2026.

4. Learned counsel for the Petitioner, at the outset, contended that the Opposite Party No.1-planitff initially filed a suit for partition and permanent injunction and other consequential reliefs. He further submitted that in the abovenoted partition suit a preliminary decree

has already been drawn and that the suit is continuing for the drawal of a final decree. Learned counsel for the Petitioner, at this juncture contended that during the final decree proceeding the defendant No.1 moved an application under Order 26 Rule 9 of the CPC with a prayer for appointment of a Survey Knowing Commissioner for local investigation upon the suit land. Such application was objected to by the plaintiff without filling any written objection. The learned trial court while considering the application of the defendant No.1 and under Order 26 Rule 9 of the CPC and has observed that the stage at which such application was filed is not the proper stage for filing of such an application and that he has observed that there is no requirement for any local investigation through the appointment of a Survey Knowing Commissioner, since the evidence on record is a sufficient to effectively adjudicate the matter in dispute and all the issues. Accordingly, the application filed by the Defendant No.1 under Order 26 Rule 9 of the CPC has been rejected as it was found that the same is devoid of merit.

5. On a careful analysis of the submissions made by the learned counsel for the Petitioner, further on a careful examination of the background facts and on a close scrutiny of the impugned order, this Court observed that the Defendant No.1's application for appointment of his Survey Knowing Commissioner under Order 26 Rule 9 of the CPC in a final decree proceeding has been rejected by the learned trial court. While rejecting such application, the learned trial court has taken two grounds; that the stage is not proper to file such an application and in view of the evidence on record, there is no requirement for a local investigation through a Survey Knowing Commissioner. In such factual backdrop, this Court is of the view that the learned trial court has not committed any illegality in

rejecting the application of the Defendant No.1. However, while disposing of the present CMP application, this Court grants liberty to the Petitioner to conduct a local investigation through a private Amin and produce such report of the Amin Commissioner before the learned trial court, subject to its acceptance as evidence in accordance with law. Further, it is open to the Petitioner to move an application at a later stage of the final decree proceeding seeking appointment of a Survey Knowing Commissioner by the Court and, subject to the satisfaction of the Court in seisin over the matter, necessary consequential order in accordance with law shall be passed by the learned trial court.

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

(A.K. Mohapatra)
Judge

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