IN THE HIGH COURT OF ORISSA AT CUTTACK
CMP No.1836 of 2026
CNR No. ODHC010826642026

Krushna Chandra Pradhan ***.....*** ***Petitioner***

Represented by Adv. –
Mr. Sanjay Kumar
Pradhan

-versus-

Bira Jura Pradhan @ Krushna Chandra Pradhan ***.....*** ***Opposite Party***

CORAM:
MR. JUSTICE ADITYA KUMAR MOHAPATRA

ORDER
16.11.2026

Order No.

01. 1. This matter is taken up through Hybrid mode.

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

3. By filing the present CMP application under Article 227 of the Constitution of India, the Plaintiff in C.S. No.467 of 2023, pending in the court of learned 2nd Additional Senior Civil Judge, Berhampur, has approached this Court, thereby challenging the impugned order dated 28.08.2026, at Annexure-5, passed by the abovenoted court, thereby rejecting his application under Section 151 of the C.P.C. to recall the attesting witnesses to the Registered Will bearing No.21/1992 dated 07.07.1992.

4. Learned counsel for the Petitioner, at the outset, contended that the Petitioner, as a plaintiff, initially filed a suit for declaration and ancillary

reliefs. He further contended that, in the meantime, evidence from both sides have been closed. However, at the fag end of the suit, at the stage of argument, it was detected that a registered Will bearing No.21/1992 dated 07.07.1992, registered in the office of the Sub-Registrar, Patrapur has not been proved in terms of the Section 68 of the Evidence Act as some of the attesting witnesses have not been examined. Thereafter, the Plaintiff moved an application under Section 151 of C.P.C. with a prayer to re-open the Plaintiff's evidence for the limited purpose of examining one of the attesting witnesses to the aforesaid Will. Learned counsel for the Petitioner while justifying his prayer, submitted before this Court that although initially a statement was made that the Plaintiff's claim is not based on the Will of the year 1992 and that such claim is not specifically based on the Will of the year 2004. Both the Wills are interlinked. In such view of the matter, learned counsel for the Plaintiff-Petitioner submitted that trial court has committed an illegality by not reopening the Plaintiff's evidence and permitting him to re-examine the attesting witness to the Will of the year 1992.

5. On perusal of the impugned order dated 28.08.2026, at Annexure-5, this Court observes that the learned trial court, after discussing the factual backdrop of the case, has rejected the Plaintiff's prayer basically on two grounds. Firstly, the Plaintiff in his petition admitted that he has not claimed any relief on the basis of the Willnama dated 07.07.1992. Secondly, such reopening of the evidence cannot be allowed unnecessarily to merely fill-up the lacuna in the Plaintiff's evidence.

6. Learned counsel for the Petitioner, in course of his argument, did not dispute the fact that the claim of the Plaintiff is not based on the Will dated 07.07.1992. However, he submitted that in view of the provision contained in Section 68 of the Indian Evidence Act, the Will is required to be proved

by examining the attesting witnesses. It was also brought to the notice of this Court that the Will of the year 2004 is linked to the Will of the year 1992.

7. On a careful examination of the impugned order dated 28.08.2026, this Court found that the learned trial court has not committed any illegality that warrants interference by this Court in exercise of its power under Article 227 of the Constitution of India.

8. However, it is made clear that it is open to the Petitioner to argue such points referring the Will of the year 2004 and the same shall be considered by the learned trial court while deciding the issue finally.

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

(Aditya Kumar Mohapatra)
Judge

Debasis

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Designation: SECRETARY
Reason: Authentication
Location: ORISSA HIGH COURT
Date: 17-Nov-2026 15:12:06