IN THE HIGH COURT OF ORISSA AT CUTTACK
CMP No.1914 of 2026
CNR No. ODHC010852562026

Sradhanjali Jena & Anr. ..... ***Petitioners***

Represented by Adv. -
Brahmananda Tripathy

-versus-

Sarojini Khatei & Ors. ..... ***Opposite Parties***

Represented by Adv. -

CORAM:
MR. JUSTICE ADITYA KUMAR MOHAPATRA

ORDER
09.11.2026

Order No.

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

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

3. The plaintiff-Petitioners have approached this Court by filing the present application under Article 227 of the Constitution of India, thereby challenging the impugned order dated 18.06.2026 passed by the learned 2nd Addl. Civil Judge, Senior Division, Bhubaneswar in C.S. No.809 of 2018. By virtue of the impugned order at Annexure-8, the learned trial court has rejected the plaintiffs' application under Order 26 Rule 9 of the CPC on the ground that in the event such application is allowed, the same would enable the plaintiff to collect evidence and, that the proceeding under Order 26 Rule 9 of the CPC is discretionary in nature.

4. Learned counsel for the plaintiff-Petitioners, at the outset, contended that at the time of filing of the suit the plaintiffs filed an application under Order 39 Rule 1 & 2 of the CPC. The learned trial court directed the parties to maintain status quo. He further submitted that since the status quo order was violated, the plaintiff filed an application for local investigation and to ascertain the proper description of the property along with a questionnaire. However, such application has been rejected by virtue of the impugned order.

5. On a careful consideration of the materials on record and taking note of the submissions made by the learned counsel for the Petitioners, this Court found that the plaintiff sought for an appointment of a Survey Knowing Civil Court Commissioner in a proceeding under Order 39 of the CPC. Therefore, it was open to the plaintiff to move an application under Order 39 Rule 7 of the CPC. However, the plaintiff instead moved an application under Order 26 Rule 9 of the CPC. On a careful examination of the factual background of the present case, this Court found that such application has been inadvertently filed under Order 26 Rule 9 of the CPC which is not disputed by the learned counsel for the plaintiff. In the aforesaid factual backdrop, this Court, while disposing of the present CMP application grants liberty to the Petitioner to move an application under Order 39 Rule 7 of the CPC. In the event he has approached the learned trial court alleging violation of the injunction order and in the event any such application is filed by the plaintiff, the same shall be considered strictly in accordance with law, irrespective of the

fact that the application of the plaintiff under Order 26 Rule 9 has already been dismissed by the learned trial court, and be disposed of as expeditiously as possible.

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

(A.K. Mohapatra)
Judge

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