IN THE HIGH COURT OF ORISSA AT CUTTACK
CMP No.1923 of 2026
CNR No. ODHC010860712026

Satyanarayan Khandei & Ors. ***.....*** ***Petitioners***

Represented by Adv. - Tusar Kumar Mishra

-versus-

Bishnu Charan Khandai & Ors. ***.....*** ***Opposite Parties***

Represented by Adv. -

CORAM:
MR. JUSTICE ADITYA KUMAR MOHAPATRA

ORDER
17.11.2026

Order No.

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

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

3. By filing the present application under Article 227 of the Constitution of India, the defendant Nos.2, 3 & 5 in C.S. No.73 of 2020 have approached this Court thereby challenging order dated 29.10.2026 passed on an application filed by the defendant No.4 under Order 26 Rule 9 of the CPC with a prayer for appointment of a Survey Knowing Commissioner to enquire and find out as to whether any construction has been made on the suit schedule land by the parties to the suit.

4. Learned counsel for the Petitioners, at the outset, contented that the Opposite Party No.1, as plaintiff, has filed a suit for partition and consequential reliefs. He further submitted that during

the pendency of the suit, the defendant No.4 filed three applications, i.e., an application under Order 39 Rule 2A of the CPC, an application under Section 151 of the CPC and an application under Order 26 Rule 9 of the CPC. He further contented that the present CMP is confined to the order dated 29.10.2026 passed in the abovenoted suit on an application filed under Order 26 Rule 9 of the CPC.

5. Learned counsel for the Petitioners while assailing the impugned order dated 29.10.2026, at the outset, contended that such application filed by the defendant No.4 with a prayer for appointment of a Survey Knowing Commissioner to enquire into and find out as to whether any construction has been made by digging foundation over the suit schedule land by some of the parties to the suit, was considered at the initial stage without providing opportunity to the present Petitioners and the same has been allowed by the learned trial Court. Learned counsel for the Petitioners, at this juncture, further submitted that the order dated 29.10.2026 has been passed without even providing an opportunity of hearing to the Petitioners and at the very initial stage of the suit. He further submitted that there is no bar in passing an order under Order 26 Rule 9 of the CPC at any stage of the suit, however, opportunity of hearing should have been provided to the present Petitioners. Further, referring to the impugned order dated 29.10.2026, at Annexure-8, learned counsel for the Petitioners further submitted that the order nowhere reveals that any objection was filed by the present Petitioners and that the same has been considered by the learned trial Court before passing the impugned order. On such ground, learned counsel for the Petitioners contented that the impugned order dated 29.10.2026 passed in the

abovenoted suit is unsustainable in law and prayed for setting aside of the such order.

6. On a careful analysis of the submissions made by learned counsel for the Petitioners, further on a close scrutiny of the documents annexed to the CMP and on a careful examination of the impugned order dated 29.10.2026, it appears that the defendant No.4's application under Order 26 Rule 9 of the CPC was taken up by the learned trial Court and the same has been allowed at the initial stage. On a close scrutiny of the impugned order, it appears that an objection was filed by the plaintiff-Opposite Party No.1. However, it appears that no opportunity of hearing was provided to the present Petitioners, who are the defendant Nos.2, 3 & 5 to the suit. The order dated 29.10.2026, if allowed to be implemented, will definitely affect the interest of the defendant Nos.2, 3 & 5. Moreover, the trial Court order is silent about any notice to the defendant Nos.2, 3 & 5 on the application filed under Order 26 Rule 9 of the CPC by the defendant No.4. In such view of the matter, and on such limited ground that the Petitioners were not provided with an opportunity, at least the same is not evident from the materials on record, this Court is inclined to set aside order dated 29.10.2026. Accordingly, the same is hereby set aside.

7. Further, the matter is remanded back to the learned trial Court to reconsider the application filed by the defendant No.4 under Order 26 Rule 9 of the CPC after providing opportunity to all concerned. The counsel appearing for the defendant Nos.2, 3 & 5 undertakes to file his objection within two weeks from today. In the event, any such objection is filed, the learned trial Court shall rehear the matter after providing opportunity to all concerned and

make every endeavour to dispose of the application at the earliest, preferably, within a period of four weeks from the date of filing of the objection by the defendant Nos.2, 3 & 5. It is further made clear that in the event the defendant Nos.2, 3 & 5 failed to file their objection, the learned trial Court shall not provide any opportunity for filing such objection and shall proceed with the adjudication of the application strictly in accordance with law and on the basis of the materials available on record.

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

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(A.K. Mohapatra)
Judge

Anil

Signature Not Verified
Digitally Signed
Signed by: ANIL KUMAR SAHOO
Reason: Authentication
Location: High Court of Orissa, Cuttack
Date: 18-Nov-2026 11:14:30