IN THE HIGH COURT OF ORISSA AT CUTTACK
CMP No.1970 of 2026
CNR No. ODHC010879902026

Rabinarayan Mishra ..... ***Petitioner***

Represented by Adv. - Chandra Madhab Singh

-versus-

ABHAYA KUMAR SADANGI ..... ***Opposite Party***

Represented by Adv. -

CORAM:
MR. JUSTICE ADITYA KUMAR MOHAPATRA

ORDER
18.11.2026

Order No.

01. 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 Plaintiff in C.S. No.101 of 2014 pending in the Court of learned Civil Judge (Junior Division), Satyabadi has approached this Court challenging the impugned rejection order dated 22.09.2026 passed by the abovenamed Court thereby rejecting the Plaintiff's application under Order 36 Rule 9 of CPC seeking appointment of survey knowing commissioner for

measurement of the suit schedule properties.

4. Learned counsel for the Petitioner at the outset contended that the Petitioner as Plaintiff filed a suit for declaration of title and for permanent injunction. He further submitted that during the pendency of the suit the Plaintiff filed an application initially under Order 26 Rule 9 of the CPC with a prayer for appointment of a survey knowing commissioner. Such application was disposed of vide order dated 24.01.2018 at Annexure-4 by the learned trial Court with the following observation;

> *"Further, parties are at liberty to get the suit lands measured through any private commissioner in the meantime. Hence, I do not find any merit in the present petition for which it stands rejected with observation and liberty to the plaintiff that he is at liberty to move such a similar petition at the conclusion of evidence from both sides, if it is so required"*

Thereafter, the suit which was pending in the Puri Court was transferred to Satyabadi Police Station.

5. Learned counsel for the Petitioner further contended that after closure of evidence from both sides, the Plaintiff once again moved an application under Order 26 Rule 9 of CPC with a prayer for appointment of a survey knowing commissioner for measurement of the suit schedule properties. Such application having been rejected by virtue of the order dated 22.09.2026, the Petitioner has approached this Court by filing the present CMP application.

6. On perusal of the impugned order dated 22.09.2026 it appears that the Plaintiff's application has been rejected on the ground that the Plaintiff was aware of the physical status of the property, as the alleged construction took place between November, 15, 2015 to November, 30, 2015 and yet choose not to move an application during the evidence stage. Moreover, the learned trial Court has also observed that appointment of a Commissioner at the belated stage would effectively amount to facilitating collection of evidence to fill the lacunae in the Plaintiff's evidence and that the machinery of the Court cannot be used to substitute for the Plaintiff's obligation to prove his own case by standing on his own legs.

7. On a careful examination of the impugned order as well as order dated 24.01.2018 at Annexure-4, this Court found that the Plaintiff had earlier moved an application under Order 26 Rule 9 of the CPC. However, the same was rejected by granting liberty to the Petitioner to measure the land by engaging a private Amin. Moreover, liberty was granted to the Petitioner by virtue of the order dated 24.01.2018 to move such an application after closure of the evidence. Despite such liberty having been granted to the Petitioner to seek appointment of a survey knowing commissioner for measurement of the suit schedule properties, the learned trial Court has rejected the Plaintiff's application under order 26 Rule 9 of CPC. It is without doubt the appointment of a survey knowing commissioner under Order 26 Rule 9 of CPC is a discretionary order to be passed by the learned trial Court subject to the satisfaction of the Court with regard to such appointment. In the

instant case, the learned trial Court, at the initial stage, rejected the application of the Plaintiff under Order 26 Rule 9 thereby granting liberty to either measure the land by engaging a private Amin or to seek for such appointment by filing an application under Order 29 Rule 9 at a later stage of the suit.

8. It appears that the application which was filed at a later stage, pursuant to the liberty granted at the earlier stage of the suit has been rejected on the ground of delay and other grounds mentioned hereinabove. Although this Court finds no illegality in the order dated 24.01.2018 at Annexure-4, taking into consideration the fact that such direction is discretionary, this Court observes that the learned trial Court while disposing of the application has not taken note of the observation given at the earlier stage of the suit vide order dated 24.01.2018. Particularly, in view of the specific assertion of the learned counsel for the Plaintiff that though he had measured the land with the help of a private Amin and such report has been filed before the learned trial Court, the same has not been accepted in evidence or considered by the learned trial Court.

9. In such view of the matter, this Court while disposing of the present application without interfering with the impugned order, directs the learned trial Court to consider any private Amin report submitted by the Plaintiff at the earlier stage of the suit pursuant to the liberty granted vide order dated 24.01.2018, after providing opportunity of hearing to all concerned. In the event, any such report prepared by the private Amin is filed, the same shall be considered by the learned trial Court.

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

(Aditya Kumar Mohapatra)
Judge

Sisir

Signature Not Verified
Digitally Signed
Signed by: SISIR KUMAR SETHI
Designation: Personal Assistant
Reason: Authentication
Location: ORISSA HIGH COURT
Date: 21-Nov-2026 15:34:40