IN THE HIGH COURT OF ORISSA AT CUTTACK

CMP No.1536 of 2023
CNR No.ODHC010990562023

Bhagaban Baisakh .... ***Petitioner***

Mr. Bibhudhananda Muduli, Advocate

-versus-

Birakishore Nayak .... ***Opp. Party***

Mr. Ambika Prasad Ray, Advocate

CORAM:
JUSTICE MRUGANKA SEKHAR SAHOO

ORDER
09.11.2026
(*Hybrid Mode*)

Order No.

06. **1.** The matter is prioritized and listed at the top of the day's list under the heading 'Stayed Matters.' By interim order dated 17.01.2024 in I.A. No.1481 of 2023 (arising out of the present application), the further proceeding in C.S. No.449 of 2021 pending in the court of learned Civil Judge (Junior Division), Second Court, Cuttack has been stayed.

2. The learned counsel for the petitioner is heard at length. The learned counsel for the opposite party made his submissions in response.

3. The petitioner before this Court is the plaintiff in the suit pending before the learned Civil Judge (Junior Division), Second Court, Cuttack. The challenge before this Court is to the order dated 04.11.2023 passed in

the C.S. The learned court rejected the interim application filed by the plaintiff in the suit-petitioner herein under Order 26 Rule 9 of C.P.C. seeking direction for appointment of Survey Knowing Commissioner. The prayer made in the application was thus:

> *"It is therefore, prayed that Hon'ble Court may graciously be pleased to depute a survey knowing civil court commissioner at the cost of the plaintiff for measurement of suit land and identification of its boundary in the field and to submits report. …"*

4. The learned court has rejected the prayer, inter alia with the following observations and reasons:

> *"… Heard the rival submission made by both the ld. Counsels. Perused the case record. On perusal of the case record it is found that the evidence from both the sides are closed and the case record is posted for argument. In the meantime, the ld. Counsel for the plaintiff submitted this petition. Further on perusal of the petition it is found that the plaintiff has pray to depute a commissioner for measurement of suit land and identification of its boundary in the field and to submit report. The appointment of commissioner should be elucidating any matter in dispute not for the purpose of collection of evidence from the side of any party. U/o.26, R-9 of CPC has clearly mentioned that, "Whether the court deems a local investigation to be requisite or proper for the purpose of elucidating any matter in dispute or of accepting the market value of any, the court may issue a commissioner to such person as it thinks fit. So, in this present circumstances, this Court founds that the deputation of Amin Commissioner in this point of time neither elucidate proceeding nor fulfill any purpose for the proper adjudication,*

where all the materials as well as evidences are in record. Its only delayed the proceeding but nothing.

The deputation of commissioner is discretion of Court and should be the purpose of felicitate the court proceeding not for collection of evidence. Hence, the petition U/o.26, R-9 of CPC stands rejected but without any order of cost. Put up the case record later for argument."

Thereafter, proceeding is pending, as the further proceeding in the matter has been stayed by the interim order of this Court.

5. Learned counsel appearing for the petitioner relies on the decisions rendered in ***Agananda Nayak v. Narayan Mohapatra:1991(II) OLR 563; Mahendranath Parida v. Purnananda Parida:AIR 1988 Ori. 246 and Haryana Waqf Board v. Shanti Sarup and other: 2009 (II) OLR (SC)-57*** to support the prayer for appointment of Civil Court Commissioner.

6. Having heard the learned counsel for the parties and having considered the decisions relied upon by the petitioner, in considered view of this Court, in the best interest of justice and for expeditious adjudication of the matter pending before the trial court, the prayer of the petitioner needs to be allowed, however, directing payment of cost to the opposite party herein, who is the defendant before the learned trial Court.

7. Accordingly, it is directed that cost of Rs.3000/- fixed by this Court shall be deposited by the plaintiff-petitioner, before the learned Civil Judge (Junior Division), Second Court, Cuttack/learned court in seisin of the matter within a period of 15(fifteen) working days.

Upon deposit of the amount of cost of Rs.3,000/- towards cost, the amount shall be released in favour of the opposite party. The opposite party upon receiving the amount, the learned court shall do well to pass order directing deputation of Survey Knowing Civil Court Commissioner at the cost of the plaintiff for measurement of the suit land and identification of the boundary with reference to the revenue map and to submit report to the Court as prayed for by the plaintiff in the petition under Order 26, Rule-9 of the CPC.

8. It is further directed that the suit shall go to the stage of the defendant/present opposite party getting the opportunity to file evidence in rebuttal to the report of the Civil Court Commissioner as well as have the opportunity to cross-examine the Civil Court Commissioner.

9. With the aforesaid observation, the petition is allowed and disposed of.

Before parting with the matter, this Court puts on record its appreciation of Mr. Ray, learned counsel for the opposite party as well as Mr. Muduli, learned

counsel for the petitioner for rendering able assistance to dispose of the matter, wherein the proceeding before the learned trial court was stayed.

(Mruganka Sekhar Sahoo)
Judge

Radha

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