



IN THE HIGH COURT OF ORISSA AT CUTTACK

CMP No.144 of 2025

Surendra Kumar Tibarewal

....

Petitioner

Mr. M.R. Baug, Senior Advocate

-Versus-

Pragyan Rout

....

Opposite Parties

CORAM:

MR. JUSTICE R.K. PATTANAİK

ORDER

28.03.2025

Order No.

01.

1. A Memo of appearance is received from Mr. Baug, learned Senior Advocate the same is accepted and taken on record.
2. Notice to the opposite party is dispensed with as the same is not necessary.
3. Heard Mr. Baug, learned Senior Advocate for the petitioner.
4. Instant petition is filed by the petitioner challenging the impugned order dated 16th January, 2025 passed in C.S. No. 1249 of 2024 as at Annexure-2 by learned Civil Judge (Senior Division), First Court, Cuttack on the grounds stated therein.
5. Mr. Baug, learned Senior Advocate appearing for the petitioner submits that a fixed court fee is required to be paid and not on the valuation of the suit at Rs.10 lac but the same has been demanded by learned court below. The further submission is that there is no such provision in Section 7 of the Court Fees Act for payment of court fee in a suit for partition and in absence whereof, as per Article 17-A of Schedule-II of the said Act, a fixed court fee is



payable and since according to the above provision, the valuation exceeded Rs. 4,000/-, hence, court fee of Rs. 300/- was paid, which is according to law, however, learned court below failed to take judicial notice of the same and passed the impugned order i.e. Annexure-2.

6. As per the Court Fees Act and in view of Article 17-A thereof of Schedule-II, the proper fee payable is at Rs.30/- if the value for the purpose of jurisdiction does not exceed Rs.4,000/- and in case such value exceeds, it shall be Rs. 200/-

7. In the instant case, the suit is for partition as made to reveal from a copy of the plaint at Annexure-1. On a reading of the plaint, the Court finds that the suit is for partition simpliciter with a preliminary decree declaring 50% share in favour of the petitioner in respect of the suit schedule property. Considering the same and relevant provision referred to hereinabove as the suit is for partition by metes and bounds with equal share declared in favour of the petitioner and opposite party, the petitioner has paid a fixed court fee of Rs. 300/-, which is according to the Court Fees Act and therefore, the learned court below was not right to demand ad valorem Court fee on the valuation of the property. In other words, the Court is of the view that the petitioner paid the fixed court fee as per the Court Fees Act, which is in consonance with Article 17-A and hence, the impugned order as at Annexure-2 demanding ad valorem court fee from him cannot be justified and hence, not legally tenable.

8. Accordingly, it is ordered.

9. In the result, the petition stands allowed. Consequently, the impugned order dated 16th January, 2025 as at Annexure-2 in C.S.



No. 1249 of 2024 by learned Civil Judge (Senior Division), First Court, Cuttack is hereby set aside with a direction to admit the suit as fix court fee has been paid by the petitioner vis-à-vis the relief therein for partition simpliciter.

10. Urgent certified copy of this order be issued as per rules.

(R.K. Pattanaik)
Judge

kabita

Signature Not Verified

Digitally Signed
Signed by: KABITARANI MAJHI
Designation: Secretary
Reason: Authentication
Location: OHC, Cuttack
Date: 04-Apr-2025 11:42:08

