



IN THE HIGH COURT OF ORISSA AT CUTTACK

RVWPET No. 20 of 2026
CNR No. ODHC010070612026

(An application under Order-47, Rule-1 of CPC for review of Judgment dated 24.12.2025 passed in CMP No. 72 of 2021)

Dusmanta Nayak and another Petitioners

-Versus-

Gagan Charan Rout and others Opp.Parties

Advocates appeared though hybrid mode

For Petitioners : Mr. S.P. Mishra, Sr. Advocate
M/s. P.P.K. Pandit, A. Mohanty &
S. Rout, Advocates

For Opp.Parties : M/s. D.P. Mohanty, T.K. Mohanty,
P.K. Swain, M. Pal &
'R. Mohanty, Advocates for O.P. No.1

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THE HONOURABLE MR. JUSTICE SASHIKANTA MISHRA

JUDGMENT
21.08.2026

SASHIKANTA MISHRA, J.

The petitioner seeks review of the judgment passed by this Court on 24.12.2025 in CMP No. 72 of 2021 basically on the ground that the same contains an error apparent on the face of the record.



2. Bereft of unnecessary details, the facts of this case are that the above-mentioned CMP was filed by the present opposite party No.1, who was the plaintiff in C.S. No. 20 of 2011 of the Court of learned Civil Judge (Sr. Division), First Court, Cuttack. The suit was decreed ex-parte on 17.02.2012 declaring the right, title and interest of the plaintiff with confirmation of possession. Intending to challenge the said decree, the review petitioners, being the LRs of opposite party No.1, filed appeal being registered as RFA No. 164 of 2012 in the Court of learned District Judge, Cuttack along with an application seeking leave to appeal as opposite party No.1 was not a party to the suit. Said application was allowed by learned District Judge, vide order dated 28.01.2020. The plaintiff challenged such order in the above-mentioned CMP. The CMP was heard by this Court and by the judgment dated 24.12.2025, it was allowed by setting aside the order of the learned district judge.

3. Heard Mr. S.P. Mishra, learned Senior Counsel with Ms. S. Rout, learned Counsel for the review petitioners and



Mr. D.P. Mohanty, learned counsel appearing for the opposite parties.

4. Mr. Mishra would argue that the observations of this Court in Paragraphs-7 and 8 of its judgment to the effect that the review petitioners were not aware of the filing and pendency of the suit by the plaintiff is factually incorrect inasmuch as though such averment is absent in the application seeking leave to appeal, yet same has been expressly mentioned in the accompanying memorandum of appeal. This, according to Mr. Mishra, is an error apparent on the face of the record, due to which the CMP was allowed.

5. Per Contra, Mr. Mohanty would argue that unless leave is granted, the Court is not obliged to look at the averments of the memorandum of appeal. This Court rightly observed that the application seeking leave did not contain any averment that the review petitioners were aware of the pendency of the suit. He further submits that even accepting the stand of the review petitioners, it would not have any bearing on the final outcome of the case.



6. In the judgment passed by this Court, which is sought to be reviewed, this Court observed the following under paragraphs- 7 and 8:

“7. This Court fails to understand as to how it could be held so if it is borne out from materials on record that the appellant had encroached upon some portion of the property even prior to the filing of the suit and had some basis to lay a claim over such portion. It was always open to her to either seek impleadment in the suit or file a separate suit.

8. In the application seeking to leave appeal (copy enclosed as Annexure-3), it is not stated that she was not aware of the filing and pendency of the suit by the plaintiff. All that has been said is that the suit was filed by practising fraud. It cannot therefore, be said that the appellant was adversely affected by the judgment and decree. The First Appellate Court does not appear to have considered the matter from the above perspective for which the order granting leave is rendered erroneous and unsustainable. As already stated, if the Opposite Party No.1-appellant has any valid claim over the property encroached by her, it is open to her to get the same adjudicated by seeking appropriate legal remedy but she cannot be permitted to challenge the judgment and decree passed in favour of the plaintiff.”

It is not disputed that the application seeking leave to appeal does not contain any averment that the review petitioners were not aware of the pendency of the suit. However, paragraph-2 of the said application does mention that the averments of the appeal memo are to be read as part of this



petition. In the memorandum of appeal, the following has been stated in paragraph-4:

“That in the aforesaid C.S. No. 20/2011, it seems that none of the proforma respondents appeared as a result of which all of them were set exparte. In fact, there was no proper service of notice and more over the address of proforma respondent No. 9 Shantilata Sahu has not been correctly mentioned. Although the said Shantilata Sahu is a permanent resident of Puri yet she has been described as a resident of Surya Vihar and accordingly notice was issued to her. Similarly, the proforma respondent No.3 to 5 have not received any notice in the said suit. Thus, there are several infirmities in the description of the addresses of the proforma respondents in the cause title of the suit and so also notices were not properly served on them. In spite of the same the proforma respondents were set exparte and ultimately an exparte judgment was passed by the Civil Judge (SD) 1st Court, Cuttack on 17.02.2012 and the exparte decree was sealed and signed on 25.02.2012. The respondent No.1 by virtue of the said exparte decree got a declaration of his title and possession over Ac.0.048 dec. of land in Hal Plot No.620 although-he claimed his title on the basis of the agreement dt. 17.03.82 which shows that he was allegedly put to possession by the recorded owners in respect of A0.045 dec. of land in Sabik Plot No.3119, This fact was neither noticed by the learned Court below nor the respondent No.1 disclosed the same to the court. The respondent No.1 as such by playing fraud on court, obtained a decree for A0.048 dec. of land, for which the appellant is highly prejudiced. It is seen that the so-called unregistered agreement dt. 17.03.82 was marked as Ext. 3 which clearly shows that the appellant by virtue of the said agreement purportedly agreed to purchase A0.045 dec. of land from the recorded owners and at the same time he was allegedly given possession of the said A0.045dec. of land as mentioned in clause -2 of Ext. 3. This fact was totally overlooked by the Court below but it is seen that by overlooking the same a decree was passed as the Hal ROR of 1991 Ext. 2 was published in the names of the recorded owners for an area of for A0.048 dec. against the corresponding Plot No. 620. It is worthwhile to



mention here that the so-called Hal ROR Ext. 2 came into existence much after the alleged agreement Ext. 3 which is the basis of the claim of the respondent No.1, hence he is not entitled to derive any benefit in the enhanced area recorded in the Hal ROR Ext. 2. However, the learned court below without considering the said fact simply passed a decree for A0.048 dec, as per the description in the schedule of the plaint which is erroneous, malafide and is a misrepresentation of facts. As a matter of fact, this enhanced area of A0.003 dec. of land is owned and possessed by the appellant, which is well within the knowledge of the respondent No.1, The recorded owners have never dealt with the said A0.003 dec. of land in favour of the respondent No. 1 at any time in any manner. On the other hand, the appellant is in actual physical possession of the said A0.003 dec. of land which is well within her compound wall and a portion of which is covered by her residential building. Now the respondent No.1 behind the back of the appellant has obtained an exparte collusive decree for the A0.048 dec. of land including the said A0.003 dec. of land which is in possession of the appellant and also beyond the purview of the agreement Ext.3, for which the interest of the appellant is highly jeopardized and as such she is aggrieved by the judgment and decree passed in the said C.S. No.20/2011. As a matter of fact, the appellant was completely unaware of the filing of the suit and passing of the exparte decree in the same in as much as the proforma respondents were also colluded with the respondent No.1. Only after the exparte decree was passed the respondent No.1 pursued a previously filed mutation case No. 2763/2011 before the Tahasildar, Sadar, Cuttack to mutate his name for A0.048 dec. of land in Hal Plot No. 620. The appellant, from reliable sources came to know about the same, so immediately through her husband she applied for the certified copy of the order sheet and Amin report in mutation case No. 2763/2011 which was given to her on 06.09.2012. On perusal of the Amin report the appellant for the first time came to know about the exparte judgment and decree passed in the aforesaid C.S. No..20/2011 and thereafter on 01.09.2012 she applied for the certified copy of the said judgment and decree and got the same on 28.09.2012 and thereafter she is filing this appeal. Thus, the appeal filed by the appellant is within 30 days



from the date of knowledge excluding the certified copy period.”

7. A conjoint reading of the application seeking leave to appeal and the memorandum of appeal, does in fact reveal that the review petitioners had expressly stated about the filing of the suit by the plaintiff behind her back. To such extent therefore, the observation made by this Court in paragraphs- 7 and 8 can be treated as an error of record.

8. Having held as above, the next question that arises is, what would be its effect on the CMP. This Court held that the First Appellate Court did not consider the absence of averments in the application seeking leave to appeal regarding knowledge of the pendency of the suit for which the order granting leave was held to be erroneous and unsustainable. Now, this Court finds that the observation is an error of record, so, it would obviously have a bearing on the final outcome of the case. Be that as it may, this Court finds that while considering the application for seeking leave to appeal, the First Appellate Court found that the appellant (present review petitioner) has encroached some portion of the land of the plaintiff as per Amin report dated 20.12.2010,



which is prior to filing of the suit. It is further observed that the plaintiff did not file the suit for specific performance of contract but for declaration of his title. After holding so, the First Appellate Court abruptly held that the appellant was adversely affected by the judgment without specifying any reason. It goes without saying that having noted the relevant facts and particularly that the proposed appellant had encroached upon a portion of land of the plaintiff, it was incumbent upon the First Appellate Court to indicate as to how she was affected by the impugned judgment, which declared the title of the plaintiff. Moreover, it is claimed that the judgment was obtained by practicing fraud. Under such circumstances, the first appellate Court is required to justify its order to either allow or reject the application. Tested on such parameters, the impugned judgment cannot be sustained.

9. The review application is allowed. Judgment dated 24.12.2025 passed by this Court in CMP No. 72 of 2021 is modified only to the extent of substituting paragraphs- 7, 8 and 9 thereof with the following:



“7. The reasons for allowing the application seeking leave to appeal have not been specifically indicated by the learned District Judge. It goes without saying that it was incumbent upon the learned District Judge to do so.

8. In such view of the matter, the impugned order cannot be sustained and is therefore, set aside. The matter is remitted to the Court below to hear the application seeking leave to appeal afresh by passing a reasoned order upon hearing the parties.”

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Sashikanta Mishra
Judge

Orissa High Court, Cuttack
The 21st August, 2026/A.K. Rana, P.A.

Signature Not Verified

Digitally Signed
Signed by: AJAYA KUMAR RANA
Designation: P.A.
Reason: Authentication
Location: HIGH COURT OF ORISSA, CUTTACK
Date: 22-Aug-2026 12:16:57

