



IN THE HIGH COURT OF ORISSA AT CUTTACK

CMP No.384 of 2026

Santosh Kumar Agarwal

.....

Petitioner

Represented by Adv. -
Bibhuti Bhusan Mishra
2

-versus-

*Nanda Kishroe Pradhan &
Ors.*

.....

Opposite Parties

Represented by Adv. -

CORAM:

**THE HON'BLE MR. JUSTICE ADITYA KUMAR
MOHAPATRA**

ORDER

24.03.2026

Order No.

01. 1. This matter is taken up through Hybrid Arrangement (Virtual /Physical Mode).
2. Heard learned counsel for the defendant No.1-Petitioner. Perused the CMP application as well as the prayer made therein.
3. By filing the present CMP application under Article 227 of the Constitution of India, the defendant No.1 in C.S No.412 of 2010 pending in the court of learned Civil Judge (Senior Division), Chandikhole has approached this Court thereby challenging the impugned order dated 26.11.2025 whereby the application of the defendant No.1 under Order 26 Rule 9 for appointment of a Civil Court Commissioner has been rejected.
4. Learned counsel for the Petitioner at the outset contended



that the Opposite Party No.1-plaintiff filed a suit for declaration of right, title, interest and for setting aside the sale deed as well as mutation order and for permanent injunction. He further submitted that after examination of two witnesses from the defendant side, an application was moved at the instance of the defendant No.1 under Order 26 Rule 9 of the CPC with a prayer for appointment of a Civil Court Commissioner for identification of the suit scheduled land. Learned counsel for the Petitioner at this juncture contended that there exists a dispute with regard to the appointment of a Civil Court Commissioner to identify such land and assist the court in deciding the real issue and controversy in the suit. Such application having been rejected by the learned trial court on some untenable ground, the Petitioner has approached this Court by filing the present CMP application.

5. Having heard the learned counsel appearing for the Petitioner, on a careful examination of the background facts, on a close scrutiny of the impugned rejection order dated 26.11.2025 at Annexure-7, this Court is of the view that the appointment of a Civil Court Commissioner under Order 26 Rule 9 of the CPC falls within the sole discretion of the learned trial court. Therefore, the learned trial court has not committed any illegality in rejecting the application of the Petitioner filed under Order 26 Rule 9 of the CPC. However, taking into consideration the factual background of the present case, liberty is granted to the Petitioner to move a fresh application under Order 26 Rule 9 of the CPC after closure of the evidence, which shall be duly considered by the learned trial court by taking into consideration the evidence adduced by both sides and keeping in view the factual background of the present case.



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

(A.K. Mohapatra)
Judge

Anil