



IN THE HIGH COURT OF ORISSA AT CUTTACK

C.M.P. No.316 of 2024

(In the matter of an application under Article 227 of the Constitution of India)

Sashibhusan Purohit and another ***Petitioners***

-versus-

Prakash Chandra Purohit ***Opposite Party***

Appeared in this case:-

For Petitioners : Ms. P. Naidu, Advocate assisted

For Opposite Party : None

CORAM:

JUSTICE A.C. BEHERA

JUDGMENT

Date of hearing : 23.03.2026 / date of judgment : 23.03.2026

A.C. Behera, J. This Civil Miscellaneous Petition under Article 227 of the Constitution of India, 1950 has been filed by the petitioners praying for quashing(setting aside) the impugned order dated 07.02.2024 passed in FAO No.6 of 2023 by the learned District Judge, Balangir as well as the impugned order dated 24.11.2021 passed in I.A. No.42 of 2021 arising out of C.S. No.111 of 2021 by the learned Civil Judge(Senior Division), Balangir.

2. The factual backgrounds of this CMP, which prompted the petitioners for filing of the same is that, they (petitioners) filed a petition before the learned Civil Judge(Senior Division), Balangir in C.S. No.111



under Order-39, Rule-4 of the C.P.C., 1908 praying for modification/variation of the impugned order dated 24.11.2021 passed in I.A. Bo.42 of 2021 allowing them(petitioners) to sell the properties indicated in the schedule of their petition.

Learned Civil Judge(Senior Division), Balangir rejected to the said petition under Order-39, Rule-4 of the C.P.C., 1908 of the petitioners on dated 18.05.2023 assigning the reasons that,

“There are no compelling circumstances to make any variation in the order dated 24.11.02021 passed in I.A. No.42 of 2021 arising out of the partition suit vide C.S. No.111 of 2021.”

To which, the petitioners challenged by filing FAO No.6 of 2023 under Order-43, Rule-1(r) of the C.P.C., 1908 before the learned District Judge, Balangir. But, the learned District Judge, Balangir dismissed to that FAO No.6 of 2023 of the petitioners as per the judgment dated 07.02.2024.

To which, the petitioners challenged by filing this CMP under Article 227 of the Constitution of India, 1950.

3. Heard only from the learned counsel for the petitioners, as none appeared from the side of the opposite party to participate in the hearing of the CMP.



4. This CMP has arisen out of the impugned order dated 24.11.2021 passed in I.A. No.42 of 2021 in a suit for partition vide C.S. No.11 of 2021.

5. When this CMP has arisen out of a suit for partition vide C.S. No.111 of 2021 and when as per law, till the joint and undivided suit properties are partitioned through metes and bounds partition, each and every co-owner including the petitioners have their interest in every inch/parcel of the suit properties and when the petitioners and opposite party are the joint owners of the suit properties, then at this juncture, instead of allowing this CMP in full, the ends of justice shall bestly be served, if necessary directions shall be given to the learned Civil Judge(Senior Division), Balangir for disposing of the suit for partition vide C.S. No.111 of 2021 as expeditiously as possible within a period of four months from the date of passing of this judgment.

6. As such, with the aforesaid observations, this CMP filed by the petitioners is disposed of finally.

7. Registry is directed to communicate the copy of this judgment to the learned Civil Judge(Senior Division), Balangir immediately.

(A.C. Behera)
Judge

Orissa High Court, Cuttack
The 23rd of January, 2026/ Jagabandhu, P.A.