



AFR

ORISSA HIGH COURT : CUTTACK

C.M.P. No.470 of 2014

An application under Article 227 of the Constitution of India
1950

* * *

Chaguli Ojha @ Chuguli Ojha & Another ... **Petitioners.**

-VERSUS-

Manoranjan Pradhan & Another ... **Opposite Parties.**

Counsel appeared for the parties:

For the Petitioners : Mr. Maheswar Mohanty, Adv.

For the Opposite Parties : Mr. Himanshu Sekhar Panda, Adv.
(For the O.P. No.1)

P R E S E N T:

**HONOURABLE
MR. JUSTICE ANANDA CHANDRA BEHERA**

Date of Hearing: 10.07.2025 :: Date of Judgment : 25.07.2025



ANANDA CHANDRA BEHERA, J.—

1. This Civil Miscellaneous Application under Article 227 of the Constitution of India, 1950 has been filed by the Petitioners praying for setting aside the order of rejection to their Petition under Section-4 of the Partition Act, 1893 passed on dated 20.02.2014 by the learned Additional Civil Judge (Senior Division), Balasore in C.S. No.778 of 2003-I.

The Petitioners in this CMP are the Defendant Nos.2 & 3, the Opposite Party No.2 is the Defendant No.1 and the Opposite Party No.1 is the Plaintiff in the suit vide C.S. No.778 of 2003-I pending in the Court of learned Additional Civil Judge (Senior Division) Balasore at the stage of its final decree after its preliminary decree for partition.

2. The factual backgrounds of this Civil Miscellaneous Application, which prompted the Petitioners for filing of the same is that, the Opposite Party No.1 in this CMP Manoranjan Pradhan being a purchaser of the joint and undivided properties of the petitioners and Opp. Party No.2 filed the suit vide C.S. No.778 of 2003-I against the Petitioners & Others praying for partition of his purchased property and that suit vide C.S No. 778 of 2003-I



was decreed preliminarily for partition of his half share from the suit properties and their final decree proceedings of the said suit vide C.S No. 778 of 2003-I is continuing.

In that final decree proceedings of the suit vide C.S No. 778 of 2003-I, the Petitioners/Defendants filed a petition under Section- 4 of the Partition Act, 1893 praying for repurchasing the half share of the Plaintiff stating that, the Plaintiff is a stranger purchaser of their suit undivided dwelling house. To which, the Plaintiff objected on the grounds that, the Defendants had not prayed for repurchasing the suit properties during the trial of the suit, by filing any counter claim, for which, their petition under Section- 4 of the Partition Act, 1893 is not entertainable under law at the stage of final decree.

3. After hearing from the learned counsels of both the sides, the learned Additional Civil Judge (Senior Division), Balasore rejected to the Petition under Section-4 of the Partition Act, 1893 of the Defendant Nos.2 & 3 as per order dated 20.02.2014 assigning the reasons that, as the defendants had neither raised any counter claim nor pleaded in their W.S. regarding the declaration of the suit land as their undivided dwelling house and as no issue had



been framed in that regard in the suit and as the suit has already been decreed preliminarily for partition, then, at this stage, the relief claimed by the Defendant under Section-4 of the Partition Act, 1893 is not entertainable under law. For which, the same stands rejected.

4. On being dissatisfied with the said order of rejection to the Petition under Section-4 of the Partition Act, 1893 of the petitioners (defendant Nos.2 & 3) passed on dated 20.02.2014 in C.S. No.778 of 2003-I by the learned Additional Civil Judge (Senior Division), Balasore, the said Defendant Nos.2 & 3 challenged the same by filing this CMP under Article 227 of the Constitution of India, 1950 being the petitioners against the Opp. Parties including the Plaintiff praying for quashing that order dated 20.02.2014 passed in the suit vide C.S. No.778 of 2003-I.

5. I have already heard from the learned counsel for the Petitioners (Defendant Nos.2 & 3) and the learned counsel for the Opposite Party No.1 (Plaintiff).

6. The crux of this CMP is,

Whether a petition under Section-4 of the Partition Act, 1893 can be entertainable under law at the stage of



final decree in a suit for partition like C.S. No.778 of 2003-I?

7. During the course of hearing, in order to assail the impugned order, the learned counsel for the Petitioners relied upon the following decisions:-

(i) 1996 (11) SCC 446- (Ghantesher Ghosh Vrs. Madan Mohan Ghosh & others.

(ii) AIR-1988 Orissa Page-42 (Anirudha Adhikari Vrs. Amarendra Adhikari).

(iii) AIR-1957 SC-363 (Pirgonda Hongonda Patil Vrs. Kalgonda Shidgonda Patil & Others).

(iv) 2008(II) OLR(SC)-511 (P. Kunjukrishna Pillai & another Vrs. D. Sreekantan Nair & others).

(v) 1997 (I) OLR-484 (Gudu Bhotra & others Vrs. Tapaswini Rondhari & Others).

8. The Petitioners, in this CMP (Defendant Nos.2 & 3 in the suit) have specifically stated in their written statement that, the Opposite Party No.1 (Plaintiff) is a stranger to their family and the suit properties is their undivided dwelling house.



9. The suit of the Plaintiff vide C.S. No.778 of 2003-I has been decreed preliminarily allotting half share to him (Plaintiff) as a purchaser from the co-sharer of the Defendant Nos.2 & 3.

10. On this aspect the propositions of law has already been clarified in the ratio of the following decisions:-

(i) *In cases between **Ghantesher Ghosh Vrs. Madan Mohan Ghosh & others:1996 (11) SCC 446 & Babulal Vrs. Habibnoor Khan (Dead) By LRs. & Others:2000 (III) Civil law Times (SC) 118** that, an application under Section-4 of the Partition Act, 1893 is maintainable only when the stranger transferee filed the suit for partition and separate possession of the undivided share transferred to him by the co-owner of the applicants concerned or else the petition under Section-4 of the Partition Act, 1893 is not maintainable under law.*

11. So far as the stage of the maintainability of the petition under Section-4 of the Partition Act, 1893 is concerned!

on that, aspect the propositions of law has already been clarified in the ratio of the following decisions:-

(i) *In a case between **Bimalendu Chatterjee & Another Vrs. Smt. Sarita Chhyajlani & Others** reported in **2002 (1) CCC 309 (Calcutta)** that, application under Section-4 of the Partition Act, 1893 can be*



filed for first time in execution proceedings if the stranger tries to take possession. Even after the co-sharer had become separate in title, they could maintain an application for pre-emption until decree for partition is fully satisfied. (Para Nos.17 to 20 & 22)

*(ii) In a case between **Bijan Kumar Ghosh Vrs. Swapan Mondal & Others** reported in **2024 (1) CCC 171 Calcutta** that, an application under Section-4 of the Partition Act, 1893 can be made at any stage, of partition suit so long entire partition decree is not satisfied. It is only when decree engrossed on stamp paper, joint title of parties comes to an end and parties ceases to be a co-sharer.*

*(iii) In a case between **Anirudha Adhikari Vrs. Amarendra Adhikari AIR-1988 (Orissa) Page-42** that, suit for partition continues till passing of final decree.*

12. Here in this matter at hand, when the petition under Section-4 of the Partition Act, 1893 has been filed by the Defendant Nos.2 & 3 in the suit vide C.S. No.778 of 2003-I at the stage of final decree praying for repurchasing the purchased share of the Plaintiff from their co-sharer stating that, the suit properties are their undivided dwelling house on the basis of their pleadings in their written statement, then, at this juncture, in view of the principles of law enunciated in the ratio of the above decisions of Apex Court and Hon'ble Courts, the learned



Additional Civil Judge (Senior Division) Balasore should not have rejected their petition under Section-4 of the Partition Act, 1893 only on the ground that, such petition is not maintainable at the stage of final decree of the suit.

For which, the impugned order dated 20.02.2014 passed by the learned Additional Civil Judge (Senior Division), Balasore in the suit vide C.S. No.778 of 2003-I cannot be sustainable under law.

13. Therefore, there is justification under law for making interference with the same through this CMP filed by the petitioners (defendant Nos.2 & 3).

14. As such, there is merit in this CMP filed by the Petitioners (Defendant Nos.2 & 3). The same must succeed.

In result this CMP filed by the Petitioners (Defendant Nos.2 & 3) is allowed on contest.

15. The impugned order dated 20.02.2014 passed in C.S. No.778 of 2003-I by the learned Additional Civil Judge (Senior Division), Balasore is quashed and held that, the petition under Section-4 of the Partition Act, 1893 filed by the Defendant Nos.2



& 3 in the suit vide C.S. No.778 of 2003-I at the stage of its final decree is maintainable under law.

The learned Additional Civil Judge (Senior Division), Balasore is directed to dispose of that petition under Section-4 of the Partition Act, 1893 of the Defendant Nos.2 & 3 in the suit vide C.S. No.778 of 2003-I reaching in a conclusion through an enquiry to the same as per law taking oral and documentary evidence from the parties providing them opportunity of being heard, whether the suit properties are the undivided dwelling house of the defendant Nos.2 & 3 or not.

The learned Additional Civil Judge (Senior Division), Balasore shall dispose of that petition under Section-4 of the Partition Act, 1893 of the defendant Nos.2 & 3 as expeditiously as possible within a period of three months from the date of appearance of the parties as per the Judgment in this CMP.

16. The parties in this CMP are directed to appear before the learned Additional Civil Judge (Senior Division), Balasore in the pending suit vide C.S. No.778 of 2003-I on dated 12.08.2025 for the purpose of receiving the directions of the said Court as to the



further proceedings of that suit according to the directions made above.

17. The Registry is directed to communicate the copy of this judgment immediately to the learned Additional Civil Judge (Senior Division), Balasore in reference to C.S. No.778 of 2003 Class-I.

18. Accordingly, the CMP is disposed of finally.

(ANANDA CHANDRA BEHERA)
JUDGE

*High Court of Orissa, Cuttack
The 25.07.2025// Sarbani Dash
Jr. Stenographer*