



IN THE HIGH COURT OF ORISSA AT CUTTACK

CMP No.735 of 2026

Parbati Senapati

.....

Petitioner

Represented by Adv. –
Mr. Amit Prasad Bose

-versus-

Satyabhama Barik & Others

.....

Opposite Parties

Represented by Adv. -

CORAM:

MR. JUSTICE ADITYA KUMAR MOHAPATRA

ORDER

06.05.2026

Order No.

- 01.
1. This matter is taken up through Hybrid mode.
 2. Heard learned counsel for the Petitioner, where the CMP application as well as the prayer made therein.
 3. By filing the present application under Article 227 of the Constitution of India the petitioner in CMA No.30 of 2024 arising out of Execution Case No.9 of 2002, which is pending before the learned Civil Judge Junior Division, Dhamnagar and arises out of T.S. No.360 of 1994, has approached this Court by challenging order dated 23.03.2026 passed by the learned Executing Court i.e. the Court of learned Civil Judge Junior Division, Dhamnagar in the above noted CMA application.
 4. Learned counsel for the petitioner at the outset contended that the title suit was initially decreed in favour of the plaintiff. Thereafter the plaintiff, as decree holder, filed an execution case bearing No.9 of 2002. In the said Execution Case the defendant-



judgment debtors were noticed during the pendency of the Execution Case, the petitioners filed an application bearing CMA No.30 of 2024 under Order 21 Rule 97, 101, 102 of the CPC as third parties to the suit. He further submitted that since the petitioners were not parties to the suit, they are not bound by the decree. However, since there was a threat to their possession in the execution case and to protect their possession, they have moved an application in the pending Execution Case under Order 21 Rule 97, 101, 102 of the CPC. Such application was initially rejected, however later the petitioners preferred an appeal bearing FAO No.40 of 2025.

5. The learned Additional District Judge, Bhadrak disposed of the aforesaid appeal vide order dated 27.12.2025 at Annexure-8 by directing the learned Civil Judge Junior Division, Dhamnagar to collect evidence from both sides within two months from the date of receipt of that order regarding the relationship of the appellant to that of the original deceased defendant and, if the appellant succeeds in establishing such relationship, then the learned Executing Court has to proceed in CMA No.30 of 2024 as per law and dispose of the same as expeditiously as possible, preferably within a period of six months. After disposal of the FAO vide order dated 19.11.2024 the appellant-petitioner approached the learned Executing Court.

6. The learned counsel for the petitioner at this juncture contended that although the petitioner has been granted liberty by the first Appellate Court to adduce evidence with regard to his relationship with the original deceased defendant, however, it was found that since there is no pleading in the CMA application, to that



application the petitioner wanted to amend the pleadings in CMA No.30 of 2024 and, has accordingly moved an application before the Executing Court for the same. The learned Executing Court by virtue of the impugned order dated 20.03.2026 observed therein that the learned trial Court is bound by the direction of the Appellate Court and as such it is required to confine itself to the issues specifically framed by the first Appellate Court in its order dated 19.11.2026. Thus, entertaining an application for amendment is beyond the jurisdiction of the learned Executing Court. Accordingly, the amendment application of the Petitioner was rejected by the learned Executing Court.

7. On an analysis of the submissions made by the learned counsel for the Petitioner, further on a close scrutiny of the impugned order dated 20.03.2026 at Annexure-1 to the CMP application, this Court found that the learned Executing Court has not committed any illegality and it has not committed any jurisdictional error by passing the order dated 20.03.2026. As such, the impugned order at Annexure-1 does not call for any interference by this Court, at this stage. Therefore this Court, while disposing of the present writ application further clarifies that the specific issue has already been dealt with by the first Appellate Court in its order dated 19.11.2024 at Annexure-8. As such, both the parties are put on notice with regard to the factual position in respect of which they are required to adduce evidence. Moreover, the CMA application cannot be construed as a pleading so that the provision under Order 6 Rule 17 be applied to such an application.



8. In view of the aforesaid submissions this Court further clarifies that it is open to the parties to read their respective evidence strictly confining to the issue framed by the First Appellate Court.
9. Accordingly, the CMP application stands disposed of.

(A.K. Mohapatra)
Judge

Sipra

Signature Not Verified

Digitally Signed
Signed by: SIPRA MUDULI
Reason: Authentication
Location: High Court of Orissa,
Cuttack
Date: 10-May-2026 12:08:19

