



IN THE HIGH COURT OF ORISSA AT CUTTACK

CMP No.744 of 2026

Kaminiranjan Tanty & Anr.

.....

Petitioners

Represented by Adv. -
Kishore Kumar Mishra

-versus-

State of Odisha & Ors.

.....

Opposite Parties

Represented by Adv. -
Mr. D.K.Sahoo, A.G.A.

CORAM:

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

ORDER

Order No.

05.05.2026

01. 1. This matter is taken up through Hybrid Arrangement (Virtual /Physical Mode).
2. Heard learned counsel for the Petitioners. Perused the CMP application as well as the prayer made therein.
3. By filing the present CMP application, the plaintiff in C.S. No.64 of 2017 pending in the Court of learned Civil Judge (Sr. Division), Champua, has approached this Court thereby challenging order dated 10.04.2026 passed by the learned trial court on an application of the plaintiff under Order 26 Rule 9 of the CPC with a prayer for prayer to depute a survey knowing commissioner for the purpose of local investigation and demarcation of the suit land.
4. Learned counsel for the Petitioners at the outset contended that there exists a dispute between the parties with regard to the



identification of the land. Therefore, the appointment of a survey knowing commissioner at this juncture would help the learned trial court to arrive at a just conclusion. He further submitted that deputation of a survey knowing commissioner would assist the learned trial court in deciding the suit effectively. Further, referring to the judgment of this Court in ***Dolagobinda Rath and others vs. Lokanath Mishra*** reported in ***(2017) 1 OLR 580***, the learned counsel for the Petitioners contended before this Court that Order 26 Rule 9 does not prescribe for any specific stage at which such power can be exercised. Rather the power is wide and can be exercised by the learned trial court at any stage of the suit. On such ground, learned counsel for the Petitioners contended that the rejection of the plaintiff-Petitioners' application by the learned trial court is bad in law and the same is liable to be quashed.

5. On a careful consideration of the submissions made by the learned counsel for the Petitioners, further on a close scrutiny of the impugned rejection order dated 10.04.2026, this Court observes that the learned trial court has rejected the prayer of the Petitioners under Order 26 Rule 9 by passing a speaking and reasoned order. The impugned order reflects that the learned trial court, before rejecting the application, has analysed the factual as well as legal background elaborately. On a careful analysis of order dated 10.04.2026, this Court is of the considered view that the same does not call for any interference by this Court, at this stage. More so, the exercise of the power under Order 26 Rule 9 being discretionary in nature, this Court in exercise of its power



of superintendence under Article 227 cannot interfere which such order in a routine manner, unless the Petitioners bring to the notice of this Court that the learned trial court has committed any jurisdictional error. In view of the aforesaid analysis, this Court, while declining to interfere with the impugned order dated 10.04.2026, deems it proper to dispose of the CMP application by granting liberty to the Petitioners to move a fresh application after closure of the evidence. In the event any such application has been filed by the plaintiff-Petitioners, the same shall be considered by the learned trial court in accordance with law, keeping in view the judgments be cited by the Petitioners in support of his contention.

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

(A.K. Mohapatra)

Judge

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