



IN THE HIGH COURT OF ORISSA AT CUTTACK
CMP No.1095 of 2025

Hemalata Khamari Sharma
and others

.....

Petitioners

Represented by Adv. –

Mr. Ashis Kumar Padhee

-versus-

Ashanidhi Nayak

.....

Opposite Party

Represented by Adv. –

Mr. Padmanava Jena,
K. Sahoo, H.K. Tripathy,
J.K. Digal, B. Pujari,
K. Naik

CMP No.1096 of 2025

Hemalata Khamari Sharma
and others

.....

Petitioners

Represented by Adv. –

Mr. Ashis Kumar Padhee

-versus-

Ashanidhi Nayak

.....

Opposite Party

Represented by Adv. –

Mr. Padmanava Jena, K.
Sahoo, H.K. Tripathy,
J.K. Digal, B. Pujari,
K. Naik

CORAM:
THE HON'BLE MR. JUSTICE ADITYA KUMAR MOHAPATRA

ORDER
25.03.2026



Order No.

- 06.
1. These matters are taken up through Hybrid Arrangement (Virtual /Physical Mode).
 2. Heard learned counsel for the Petitioners as well as learned counsel appearing for the Opposite Party. Perused the CMP applications as well as the prayer made therein.
 3. CMP No. 1095 of 2025 has been filed by the Defendant in C.S. No.151 of 2011 thereby challenging order dated 06.03.2025 passed by the learned Additional Senior Civil Judge, Bolangir thereby allowing the application of the Plaintiff-Opposite Party filed under Order 26 rule 9 of the CPC with a prayer for appointment of an Amin Commissioner for local investigation and demarcation of the proof. Similarly, CMP No.1096 of 2025 has been filed by the Defendant in the very same suit pending before the very same Court challenging order date 06.03.2025 whereby rejecting the Defendant's application to accept certain documents which were introduced by the Defendant during the pendency of the suit along with such application. Since both the CMP applications arise out of the very same suit and the Parties are common in both the CMP applications, with the consent of the learned counsels appearing for both sides, both the applications were taken up together and the same have been disposed by the following common order.
 4. On perusal of the record it appears that the Opposite Party as Plaintiff filed the suit for declaration and permanent injunction. After appearance of the Parties issues were framed and in the suit the trial is going on. Learned counsel for the Petitioners at the outset



contended that the evidence of the Plaintiff side is closed and that the Defendants are leading their evidence. He further contended that at the interim stage an application was filed on behalf of the Plaintiff-Opposite Party under Order 29 Rule 9 of the CPC for appointment of an Amin Commissioner for local inspection and identification of the suit schedule land. Similarly the Defendants filed an application to introduce three documents while the evidence on the defendant side was being recorded. The learned trial Court after hearing learned counsels for both sides allowed the application filed on behalf of the Plaintiff for appointment of the Amin Commissioner, and at the same time, rejected the prayer of the Defendant to introduce certain new documents as the evidence from defendant side was going on. Being aggrieved by both the matters, the Defendant in the abovenoted suit has approached this Court by filing two different CMP applications under Article 227 of the Constitution of India challenging two different orders passed on 06.03.2025 in two different applications filed in the very suit.

5. While challenging the impugned order dated 06.03.2025 at Annexure-1 in CMP No.1095 of 2025, learned counsel for the Petitioners contended that the learned trial Court has erroneously allowed the application of the Plaintiff filed under Order 26 Rule 9 of the CPC. He further contended that by allowing such application, the learned trial Court has allowed the Plaintiff to collect evidence in support of his case. He further submitted that the suit scheduled property is clearly identified. Therefore, there was no necessity to appoint any Amin Commissioner either for identification of the suit



scheduled land or any local investigation. On such ground, learned counsel for the Petitioner assailed the impugned order dated 06.03.2025, at Annexure-1 to the first CMP application.

6. Similarly, learned counsel for the Petitioner assailed the impugned rejection order dated 06.03.2025 passed in the very same suit which has been assailed in Annexure-1 to CMP No.1096 of 2025. While assailing the impugned rejection order, learned counsel for the Petitioner contended that although the facts have been pleaded by the Defendants and due to non-availability of the documents at the relevant point of time to same were not filed along with their written statement. However at the time of recording of evidence from the Defendant side, the Defendant filed an application with a prayer to accept three documents which have been specifically stated. Such application has been taken note of by the learned trial Court in the impugned rejection order dated 06.03.2025. Further, it was submitted that the introduction of the documents which are sought to be introduced by the Defendant at the time of recording of their evidence has not changed the nature and character of the suit and that the same is not create a new case from the Defendant side. In course of his argument, learned counsel appearing for the Petitioner contended that the rules of pleading so far as it applies to the Defendant is to be construed liberally as has been held by the Hon'ble Supreme Court as well as by this Court in several decisions i.e. the rigidity to apply to the pleadings so far as it relates to the Plaintiff shall not be applicable to the pleadings for the Defendant side.



7. Learned counsel for the Petitioner further emphatically argued that the documents which has been introduced by virtue of the applications filed by the Defendant during the pendency of the suit have already been pleaded in the written statement. He further assured this Court that the Defendants would not pray for recall of any witnesses in the event such documents are accepted and taken on record from the side of the Defendants. On such ground, learned counsel for the Petitioner assailed the impugned order dated 06.03.2025 thereby rejecting the Defendant's application for introduction of certain documents at a belated stage which were recovered at subsequent stage of the suit.

8. Learned counsel appearing for the Opposite Party on the other hand contended that the trial Court by virtue of a reasoned and speaking order dated 06.03.2025 has allowed the Plaintiff's application under Order 26 Rule 9 of the CPC. He further contended that so far as the provision of Order 26 Rule 9 of the CPC is concerned, the same clearly places discretion on the trial Court. It is the discretion of the learned trial Court to appoint an Amin Commissioner with regard to conducting a local inspection or for identification of the suit scheduled land. However, such discretion has to be exercised judiciously based on the facts of the each suit. In the present case the learned trial Court has considered in detail the factual background of the suit and eventually allowed the application filed by the Plaintiff under Order 26 Rule 9 of CPC. Learned counsel for the Opposite Party-Plaintiff further contended that there is no glaring illegality in the impugned order. As such, the



same does not call for any reference by this Court in exercise of its power under Article 227 of the Constitution of India. In course of his argument he also referred to the scope and jurisdiction of the Court in exercise of its powers under Article 227 of the Constitution of India and it was argued that mere errors by a Court cannot be corrected in exercise of the power under Article 227 of the Constitution of India unless this Court come to a conclusion that there are jurisdictional errors.

9. Similarly, while supporting the rejection order dated 06.03.2025 passed in CMP No.1096 of 2025. Learned counsel for the Opposite Party-Plaintiff contended that the documents were sought to be introduced by the Defendants at a belated stage. He further contended that in the event such documents are allowed to be introduced, the Plaintiff could be taken by surprise as they would not get any opportunity to rebut such documents which are sought to be introduced by the Defendant at a belated stage. On such ground, learned counsel for the Opposite Party objected to any interference with the rejection order dated 06.03.2025 which is under challenge in the 2nd CMP application.

10. Having heard the learned counsels appearing for both sides, on a careful examination of the background facts involved in the suit. Further, on a careful analysis of the submissions made by the learned counsel appearing for both sides, this Court, at the outset, observes that as against two orders passed by the learned trial Court in the very same suit, the Defendant has approached this Court by filing two different CMP applications. Since the factual background



of both the CMP applications are identical and they arise out of a common suit, both the applications were taken up and heard together. On a careful consideration of the impugned order dated 06.03.2025 passed in CMP No.1095 of 2025, this Court found that the learned trial Court after a detailed discussion of the factual backgrounds of the case has exercised its discretion under Order 26 Rule 9 of the CPC. Moreover, it is up to the learned trial Court to take assistance of the Amin Commissioner for identification of the suit scheduled properties. The law is very clear that the report of Amin Commissioner could not become ipso facto evidence unless the Amin Commissioner is put to cross-examination by the other side. In view of the aforesaid position, this Court is not inclined to interfere with the impugned order dated 06.03.2025 which is the subject matter of the dispute in CMP No.1095 of 2025. Accordingly, the CMP No.1095 of 2025 is dismissed.

11. So far the impugned order dated 06.03.2025 in CMP No.1096 of 2025 is concerned, on a careful consideration of the factual background of the present case, further taking into consideration the submissions made by the learned counsels appearing for both sides, this Court found that the Defendants, by filing an application at a belated stage, intended to introduce certain new documents. Such introduction of the documents at a belated stage was objected to by the Plaintiff. On perusal of the impugned order dated 06.03.2025, this Court found that the learned trial Court has taken note of such documents which the Defendant wants to introduce, i.e. a notice dated 14.01.2024 by the Bolangir Municipality, photo copy of the



reply dated 04.02.2004 and 10.03.2004 submitted by the father of the Defendant to the Executive Officer, Bolangir Municipality. Learned counsel for the Opposite Party-Plaintiff objected to the documents on the ground that some of the documents are photo copies of the letters which are not admissible in evidence. On a careful consideration of the submission made by the learned counsel appearing for both sides, taking into consideration the fact that an order was passed on 06.03.2025 appointing Amin Commissioner, this Court is inclined to allow the application of the Defendants for introduction of the documents at a belated stage to the extent that the original notice dated 14.01.2004 be allowed to be taken into evidence subject to the other provisions of the CPC. Since the photo copies are not admissible in evidence, this Court is not inclined to allow such prayer of the Defendants.

12. With the aforesaid observation and direction, both the CMP applications are disposed of.

(A.K. Mohapatra)
Judge

Sisir