



IN THE HIGH COURT OF ORISSA AT CUTTACK
CMP No.1519 of 2025

1. Hiranya Mahakud
2. Kabi Mahakud

.....

Petitioners

Represented by Adv. –
Mr. Kishore Kumar Mishra

-versus-

Bishekesh Mahakud

.....

Opposite Party

Represented by Adv. –
Mr. Alok Kumar Panda

CORAM:

THE HON'BLE MR. JUSTICE ADITYA KUMAR MOHAPATRA

ORDER

25.03.2026

Order No.

- 02.
1. This matter is taken up through Hybrid mode.
 2. Heard the learned counsel for the Petitioner as well as the learned counsel for the Opposite Parties. Perused the CMP application as well as the prayer made therein.
 3. By filing the present CMP application under Article 227 of the Constitution of India, the Petitioners challenges the order dated 30th June, 2025 passed by the learned Additional District Judge, Champua in F.A.O. No.03 of 2025 thereby confirming the order dated 7th April 2025 passed by the learned Civil Judge (Senior Division), Champua in I.A. No.06 of 2025, arising out of C.S. No.65 of 2010(F.D.).
 4. By virtue of the impugned order dated 30th June, 2025, the learned First Appellate Court has confirmed the order of the learned trial court rejecting the Defendants-Petitioners' application



filed under Order-39 Rule-1 & 2 of C.P.C.

5. Learned counsel for the Defendants-Petitioners, at the outset, contended that initially the Plaintiffs have filed the above noted suit for partition. The suit for partition was initially decreed thereby allotting 1/7th share to each of the co-sharers. Being aggrieved by such preliminary decree, the Defendants have filed regular First Appeal bearing R.F.A. No.13 of 2023, which is stated to be pending before the learned First Appellate Court.

6. In the meantime, the Plaintiff No.1-Opposite Party has initiated a final decree proceeding bearing C.S. No.65 of 2010 (F.D.). In the final decree proceeding, the Plaintiff No.1-Opposite Party filed an application under Order-39 Rule-1 & 2 of C.P.C. which was registered as I.A. No.06 of 2025. The said I.A. was disposed of by learned trial court vide order dated 7th April, 2025 thereby allowing the Plaintiff No.1's prayer and directing both parties to observe status quo till final adjudication of the case.

7. Being aggrieved by the aforesaid order dated 7th April 2025 at Annexure-3, the present Petitioners preferred an appeal before the First Appellate Court which was registered as F.A.O. No.03 of 2025. Learned Additional District Judge, Champua, vide order dated 30th June, 2025, after hearing from both sides, dismissed the appeal, confirming the order passed by the learned trial court. As against the aforesaid order dated 30th June, 2025 at Annexure-4, the Petitioners have approached this Court by filing the present CMP application.

8. Mr. K.K. Mishra, learned counsel for the Petitioners, at the



outset, contended that the Petitioners are entitled to 1/7th share as per the preliminary decree, although the same has been challenged by the Plaintiff No.1 by filing an appeal. He further contended that it is not disputed that the Petitioners being co-sharers are entitled to their share in the joint family property. He further contended that the Petitioners have started construction of a residential house over suit scheduled 'B' property. Although the exact details of the land over which the residential house is being constructed has not been furnished in the application. It has only be mentioned that they have started construction over Plot No.262 of Khata No.44 in Mouza-Rugudidihi. He further submitted that unless the Petitioners are permitted to complete the construction, there is every likelihood that half constructed building will deteriorate with the passage of time. He further submitted that there is no possibility of the dispute coming to an end any time soon.

9. Learned counsel for the Petitioners, in course of his argument, referred to the judgment of the Hon'ble Supreme Court in ***K.M. Pratap Vs. K.M. Gourish and Ors.***, reported in ***(2017) 11 SCC 103*** and contended that in an identical factual scenario, the Hon'ble Supreme Court permitted the Respondents to complete the construction of a half constructed house subject to the conditions mentioned in paragraph-7 of the judgment. He further submitted that the Petitioners are ready and willing to furnish an undertaking that they shall neither claim any equity on the basis of such construction made and, if the executing court directs to demolish such house constructed, they will demolish at their own



costs. In such view of the matter, learned counsel for the Petitioners contended that the order passed by the learned trial court as well as the First Appellate Court be suitably modified and the Petitioners be permitted to complete the half constructed building within the area as has been allotted to the Petitioners as per preliminary decree.

10. Learned counsel appearing for the Opposite Party, on the other hand, contended that the application filed by the Petitioners is vague since they have not furnished details regarding the land over which the construction has been made. He further contended that it is also disputed as to whether the Petitioners had made any construction over the suit scheduled land or not. He further submitted that in the event the Petitioners are permitted to carry out construction of the half constructed residential building, then the same is likely to disturb the equilibrium while allocating the land in the respective share in the final decree proceeding. It is also contended that in the event any construction is permitted, it would be difficult for the learned trial court to carve out shares in the final decree proceeding, and that it may also overlap with the area of other co-sharers. In the aforesaid ground, learned counsel for the Opposite Party contended that the learned trial court as well as the learned First Appellate Court have not committed any illegality in granting status quo order over the suit scheduled land. In such view of the matter, learned Opposite Party contended that the present CMP application, being devoid of merit, is liable to be dismissed.



11. Having heard the learned counsels appearing for the respective parties, on a careful examination of the background of the present case as well as the materials on record, further taking note of the contentions raised by the learned counsels appearing for both sides, this Court observes that the Petitioners have approached this Court being aggrieved by the order passed by the learned First Appellate Court dated 30th June, 2025 at Annexure-4 thereby confirming the order dated 7th April, 2025 passed by the learned trial court at Annexure-3. On an application being filed by the Plaintiff No.1-Opposite Party under Order-39 Rule-1 & 2 of C.P.C., the learned trial court granted status quo which was confirmed by the learned First Appellate Court. The sole grievance of the Petitioners in the present CMP petition is that although they are co-sharers in the joint family property and they had started construction of their residential house over a portion of the land which is well within their allotted share in the preliminary decree, due to the aforesaid injunction order, the Petitioners are unable to complete the construction work. In the aforesaid context, learned counsel for the Petitioners submitted that if the Petitioners are not allowed to complete the construction of a half constructed house, the same would cause more prejudice than the prejudice that is likely to be caused to the Plaintiffs. Further, taking note of the undertaking given by the learned counsel for the Petitioners that the Petitioners are ready and willing to furnish an undertaking that they shall not claim any equity on the basis of them being allowed to complete the construction, and that they are ready and willing to demolish the structure in the event the



executing court so directs, this Court is of the considered view that unless the Petitioners are permitted to complete the construction of a half constructed house, they will face more prejudice than the Plaintiffs. While passing an order of injunction, the courts are required to consider the comparative prejudice which is likely to be caused to the parties, and pass an order in light thereof. In the present case, unless the order is modified, the Petitioners are likely to suffer more as the half construed building is likely to deteriorate and that the price of construction materials used is increasing day by day. Furthermore, this Court examined the judgment of the Hon'ble Supreme Court in ***K.M. Pratap's*** case (*supra*) and found that the reasoning adopted by the Hon'ble Supreme Court is applicable to the facts of the present case.

12. Taking into consideration the submissions made by the learned counsels appearing for the parties, further keeping in view the factual background of the present case, this Court modifies the impugned order dated 30th June, 2025 at Annexure-4 to the extent that the interest of both the parties can be protected by clarifying the order dated 30th June, 2025 to the following extent:-

- (a) The Petitioners shall not create any third party rights/interest in respect of the construction now being undertaken, without express permission from the Trial Court.
- (b) The building shall not be used for any purpose, even after its completion, without express permission from the Trial Court.



- (c) In case it is ultimately found that the property does not belong to the share of the Petitioners, the Petitioners shall not be entitled to claim any equity in respect of the construction which is now being made and, they will remove the entire construction at their own cost.

13. With the aforesaid observation and direction, the CMP is disposed of.

(Aditya Kumar Mohapatra)
Judge

Debasis