



IN THE HIGH COURT OF ORISSA AT CUTTACK

CMP No.77 of 2025

Puspanjali Moharathi & others

....

Petitioners

Mr. S.K. Mishra, Sr. Advocate

-Versus-

Raghaba Das Math, Puri & others

....

Opposite Parties

None.

CORAM:

MR. JUSTICE R.K. PATTANAİK

ORDER

30.04.2025

Order No.

01.

1. Heard Mr. Mishra, learned Senior Advocate appearing for the petitioners.
2. No notices are issued to any of the opposite parties since the matter is disposed of at the stage of admission.
3. Instant petition is filed by the petitioner challenging the impugned orders dated 26th November, 2024 and 13th September, 2023 passed in C.S. No.119 of 2015 as at Annexures-3 and 2 respectively by learned Civil Judge (Junior Division), Puri on the grounds stated therein.
4. Mr. Mishra, learned Senior Advocate appearing for the petitioners submits that the impugned order as at Annexure-2 dated 13th September, 2023 is required to be recalled in order to facilitate issuance of summons to defendant No.7(a), which has been disallowed vide Annexure-3 dated 26th November, 2024. The



submission is that the suit is instituted by the petitioners primarily against defendant No.7 for his eviction. In fact, the original defendant was sought to be evicted by the petitioners and he died and was to be substituted and accordingly, notice was issued to defendant No.7(a) but it has led to the passing of the impugned orders as at Annexures-2 and 3. The submission is that unless notice is issued to defendant No.7(a), the very purpose of the suit seeking eviction would be frustrated.

5. Perused a copy of the plaint as at Annexure-1. As earlier stated, the suit is at the behest of the petitioners seeking eviction and mandatory injunction vis-à-vis defendant No.7 and to restrain defendant No.6 to take up any construction over the suit land, a public road with such other reliefs. The deceased defendant died, as a result whereof, opposite party No.11 being his successor as defendant No.7(a), notice was directed to be issued to him but as per the order dated 13th September, 2023 at Annexure-2, which is under challenge, further time to file the requisites was declined. Since previous notice was found not to have been served under the circumstances described, later thereto, the impugned order dated 26th November, 2024 was passed by learned Court below. Mr. Mishra, learned Senior Advocate for the petitioners submits that the petitioners are inclined to ensure attendance of opposite party No.11. Though, there has been notice issued to defendant No.7(a) but finally, it has led to passing of the impugned orders i.e. Annexures-2 and 3, without entering upon and the manner, in which the notice as against him has been held insufficient, the Court is of the humble view that for a final hearing and disposal of the suit in the immediate presence of the defendant, the petitioners should be granted liberty to file fresh requisites as a consequence recalling the order dated 13th September, 2023 i.e. Annexure-2. In other



words, the Court is inclined to ensure the presence and participation of defendant No.7(a) and hence, the orders as at Annexure-2 followed by Annexure-3 are required to be interfered with in the interest of justice.

6. Hence, it is ordered.

7. In the result, the CMP stands allowed. As a necessary corollary, the impugned orders as at Annexures-2 and 3 are hereby set aside with a direction for the petitioners to file the requisites within three next working days and in the event, the same are filed and received, learned Civil Judge (Junior Division), Puri shall issue summons to defendant No.7(a) forthwith and thereafter, to proceed to dispose of the suit as per and in accordance with law.

8. In the circumstances, however, there is no order as to costs.

9. Urgent certified copy of this order be issued as per rules and in course of the day.

(R.K. Pattanaik)
Judge

Balaram

Signature Not Verified

Digitally Signed
Signed by: BALARAM BEHERA
Reason: Authentication
Location: OHC, CUTTACK
Date: 30-Apr-2025 17:20:17

