



IN THE HIGH COURT OF ORISSA AT CUTTACK

CMP No. 1487 of 2024

Ajaya Pradhan & others Petitioners

Mr. B. Bhuyan, Senior Advocate

-Versus-

Lija Smita Sahu & others Opposite Parties

None

CORAM:
MR. JUSTICE R.K. PATTANAİK

ORDER
01.05.2025

Order No.
01.

1. Heard Mr. Bhuyan, learned Senior Advocate appearing for the petitioners.
2. No notices are issued to the opposite parties as the matter is disposed of at the stage of admission.
3. Instant petition is filed by the petitioners challenging the impugned order dated 1st October, 2024 passed in FAO No. 39 of 2024 by learned 1st Additional District Judge, Cuttack confirming the order in I.A. No. 01 of 2023 of learned 5th Additional. Civil Judge Senior Division, Cuttack as per Annexure-4 arising out of the suit in C.S. No. 1151 of 2023 on the grounds stated therein.
4. Mr. Bhuyan, learned Senior Advocate for the petitioners would submit that the subject matter in dispute is in medio and lying vacant, inasmuch as, the petitioners were forcibly evicted



therefrom and in the meanwhile, an application under Order 39 Rules 1 & 2 was moved by them but the court of 1st instance refused any such interim order and was finally confirmed in FAO No. 39 of 2024. The further submission is that the suit schedule property was let out earlier but post-eviction of the petitioners, it is vacant, the fact which has not been taken judicial notice of by learned court below while disposing of FAO No. 39 of 2024. The contention of Mr. Bhuyan, learned Senior Advocate is that at least, learned court below could have taken cognizance of the fact that the Lot 1 property was earlier on rent and it was having income and considering the nature of the suit and relief of partition in respect thereof with other properties involved, it had ample jurisdiction to consider appointment of a receiver in terms of Order 40 Rule 1 CPC with such further directions issued. While advancing such an argument, Mr. Bhuyan, learned Senior Advocate refers to a decision of this Court in **Suresh Chandra Rout & others Vrs. Ekadasi Swain & others (1992) 2 OLR 494**.

5. Indeed, the petitioners moved the court below in I.A. No. 1 of 2023 seeking injunction in respect of the suit property i.e. Lot No. 1 and therein, an objection was filed by the opposite parties and thereafter, it was disposed of denying any such interim order pending disposal of the suit and ultimately, it was affirmed in FAO No. 39 of 2024. From the pleadings on record and in particular, of opposite party No.1 Annexure-1, the Court finds that Lot No.1 property was let out earlier. In fact, it is pleaded that one of the shop rooms was used for running business in the name and style of M/s. Devi Medicine Store since 2003 and similarly, one Apollo Pharmacy Ltd. was inducted as a tenant in respect of other two shop rooms by the father of the petitioners, which are at present



lying vacant. Considering the same and as Lot No. 1 property was yielding income, the contention of Mr. Bhuyan, learned Senior Advocate is that learned court below ought to have considered appointment as a receiver with a direction to let it out once again. Of course, there has been no application moved by the petitioners before the learned court below in that regard. But, in view of the submission of Mr. Bhuyan, learned Senior Advocate with reference to the decision in **Suresh Chandra Rout** (supra), the Court has ample jurisdiction to direct so. In fact, this Court, in the aforesaid decision, referring to the other case laws concluded that the language of Order 39 Rule 1 CPC makes it clear that the power is very wide and is not restricted to grant of temporary injunction but to make such other order for any of the purposes referred to therein which includes appointment of a receiver in terms of Order 40 Rule 1 CPC.

6. In the instant case, as the suit is for partition and the shop rooms are lying vacant, which according to the Court, could have been tenanted so as to have income ultimately to be derived and benefitted by the parties involved and in that regard, learned court below should have exercised the jurisdiction as it is held in the decision (supra) that the powers are wide enough even including a direction to appoint a receiver. Having said that and taking judicial notice of the fact that the shop rooms were on rent previously and at present, are lying unused, the learned court below should have considered for a direction to put the same to rent again with the appointment of a receiver, without which, it is not to benefit anyone with such further directions to maintain the records of income till disposal of the suit. The above is the view of the Court taking into account the decision in **Suresh Chandra Rout** (supra) and upon reaching at a conclusion that a Court has wide powers to deal



with such situation even with appointment of a receiver as per Order 40 Rule 1 CPC.

7. Accordingly, it is ordered.

8. In the result, the CMP stands allowed. As a necessary corollary, the impugned order dated 1st October, 2024 in FAO No. 39 of 2024 as at Annexure-6 is hereby set aside with a direction to learned 1st Additional District Judge, Cuttack to reconsider disposal of the appeal in view of the observations and directions issued herein above exploring the possibility of Lot No.1 property being to put to rent with an appointment of a receiver to maintain the record of income derived therefrom and to pass appropriate order as per and in accordance with law.

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

10. Urgent copy of this order be issued as per the rules and in course of the day and also to be uploaded in the Court's Website.

(R.K. Pattanaik)
Judge

Kabita

Signature Not Verified

Digitally Signed
Signed by: KABITARANI MAJHI
Reason: Authentication
Location: Ohc, Cuttack
Date: 01-May-2025 18:23:01

