

(2023) 05 OHC CK 0237
In the Orissa High Court
Case No : CMP No. 473 Of 2023

Arjun Kumar Sethi

APPELLANT

Vs

Collector, Balasore And Another

RESPONDENT

Date of Decision : 17-05-2023

Acts Referred:

Code of Civil Procedure, 1908 — Section 151, Order 39 Rule 1, Order 39 Rule 2

Citation : (2023) 05 OHC CK 0237

Hon'ble Judges : K.R. Mohapatra, J

Bench : Single Bench

Advocate : Samir Kumar Mishra, Ajodhya Ranjan Dash

Final Decision : Disposed Of

Judgement

K.R. Mohapatra, J

1. This matter is taken up through hybrid mode.
2. Order dated 9th December, 2022 (Annexure-5) passed by learned Civil Judge (Junior Division), Balasore in I.A. No.581 of 2022 (arising out of C.S. No.336 of 2009) is under challenge in this CMP, whereby an application filed by the Petitioner under Section 151 C.P.C. with a prayer to restrain the Opposite Parties from evicting the Petitioner till final adjudication of I.A filed for temporary injunction, has been rejected.
3. Mr. Mishra, learned counsel for the Petitioner submits that the suit land has been wrongly recorded under Anabadi Khata. The Petitioner is in possession over the suit property from the time of his ancestors. The suit has been filed for declaration of right, title, interest and for ancillary as well as consequential relief. When the Opposite Parties, who are Government Functionaries threatened the Petitioner for eviction; an application in I.A. No.581 of 2022 has been filed under Order XXXIX Rules 1 and 2 C.P.C., which is pending for consideration. The petition could not be adjudicated, as the Opposite Parties-Government Functionaries have not filed their objection. As there was imminent danger of

eviction of the Petitioner, he filed an application under Section 151 C.P.C. with the aforesaid prayer. The said application was dismissed vide order dated 9th December, 2022 under Annexure-5 observing that the R.O.R. in respect of the suit property is recorded as Anabadi and thus, the balance of convenience leans in favour of the Opposite Parties.

4. It is his submission that such an observation in the impugned order under Annexure-5 will certainly influence the adjudication of the petition under Order XXXIX Rules 1 and 2 C.P.C. as well as the suit. Hence, he prays for setting aside the impugned order and to protect the possession of the Petitioner till disposal of I.A. No.581 of 2022, which is posted to 27th June, 2023 for filing of objection by the Opposite Parties.

5. Mr. Dash, learned Additional Government Advocate, on the other hand, submits that the Petitioner has lost in all the forum under the provisions of the Orissa Prevention of Land Encroachment Act, 1972. Thus, the Petitioner does not have any semblance of right to possess the suit land. While considering the application under Section 151 C.P.C., learned trial Court has rightly observed that the suit land stands recorded as Anabadi. Hence, the balance of convenience leans in favour of the Opposite Parties. He, therefore, prays for dismissal of the CMP.

6. Taking into consideration the submissions made by learned counsel for the parties, this Court is of the considered opinion that while adjudicating an application under Order XXXIX Rules 1 and 2 C.P.C., learned Court should keep in mind the urgency in the matter qua the relief claimed in the said petition. Thus, an application under Order XXXIX Rules 1 and 2 C.P.C. should be disposed of at the earliest without granting unnecessary adjournments to file objection or otherwise.

7. In that view of the matter, this Court disposes of the CMP with an observation that the Opposite Parties-Government Functionaries, if so advised, may file their objection by the next date of posting, i.e., 27th June, 2023 (as submitted by learned counsel for the Petitioner). Learned trial Court shall also make all endeavour to see that the petition under Order XXXIX Rules 1 and 2 C.P.C. in I.A. No.581 of 2022 is disposed of on that date in accordance with law without being influenced by any observation made in order dated 9th December, 2022 under Annexure-5. If for any reason, it could not be disposed of on the date fixed, then it should be disposed of within a period of seven days thereafter and not later than that date.

Urgent certified copy of this order be granted on proper application.

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