

(2024) 06 OHC CK 0063
In the Orissa High Court
Case No : C.M.P. No.642 Of 2024

Jena Dei Thakurani, Bije Dhurusia & Others

APPELLANT

Vs

Sarat Chandra Sahoo & Others

RESPONDENT

Date of Decision : 11-06-2024

Acts Referred:

Constitution of India, 1950 — Article 227

Code of Civil Procedure, 1908 — Order 21 Rule 99, Order 21 Rule 101

Citation : (2024) 06 OHC CK 0063

Hon'ble Judges : M.S. Raman, J

Bench : Single Bench

Advocate : Sourya Sundar Das, Pranab Kumar Ghose

Final Decision : Disposed Of

Judgement

M.S. Raman, J

1. This matter is taken up through Hybrid Mode.

I.A. NO.696 OF 2024

2. This Interlocutory Application has been filed for dispensing with the filing of the certified copy of the order dated 13.05.2024 passed in Execution Case No.1 of 2015 under Annexure-15 series.

3. Heard.

4. Considering the reasons stated in the I.A., filing of certified copy of the order dated 13.05.2024 passed in Execution Case No.1 of 2015 under Annexure-15 series is dispensed with for the time being. The same be filed by 19.07.2024.

5. Accordingly, the I.A. stands disposed of.

C.M.P. NO.642 OF 2024 /I.A. NO.695 OF 2024

6. Jena Dei Thakurani, Bije Dhurusia, Marfatdar, Odisha Hindu Devottar Board

has filed this C.M.P. under Article 227 of the Constitution of India to challenge the orders dated 10.05.2024 and 13.05.2024 passed by the learned Civil Judge (Junior Division), Athgarh in Execution Case No.1 of 2015 under Annexure-15 series. The said orders are said to have been passed on an application filed by the plaintiffs-decree holders in Civil Suit No.5 of 2004.

7. It is submitted by Mr. S.S. Das, learned senior counsel being assisted by Mr. P.K. Ghose, learned counsel for the petitioners that while the petition under Order-21, Rule-99 of the Code of Civil Procedure was pending consideration to be adjudicated under Order-21, Rule-101 of C.P.C., the learned Civil Judge (Junior Division), Athgarh could not have issued writ vide judgment dated 13.05.2024, which is re-produced hereunder:-

"The record is put up today for filing of fresh requisites by the learned counsel for the DHRs for issuance of the writ. Perused the case record and notice and documents which are to be issued to the Civil Court Commissioner are already with the case record. Advocate for the DHRs filed writ form i.e. P-17 and Form J-28. Perused the all documents, office check on the requisites for issuance of writ is ready. Seen. Perused the notice that no defects are found. Hence, in the interest of justice issued writ to the Civil Court Commissioner namely Javad Akhtar and also to the bailiff to identify the decreetal land by the Civil Court Commissioner and deliver the possession by the bailiff as per judgment decree in C.S.(1) 5 of 2004 and RFA 3 of 2005 and report. Put up on 01.07.2024 awaiting report."

8. Vide order dated 10.05.2024 passed in Execution Case No.1 of 2015, the learned Civil Judge (Junior Division), Athgarh though noticed that the petition was filed by the decree holders for issue of writ for delivery of possession and was aware of the fact that the present petitioners were not made party in the suit nor in the First Appeal bearing RFA No.3 of 2005 before the learned Additional District Judge, Athgarh. It is noted by the learned Civil Judge (Junior Division), Athgarh as follows:-

"The case record discloses that the present execution has been filed to execute the order passed by the Hon'ble Court of Addl. District and Sessions Judge, Athgarh in RFA No.3 of 2005. The Hon'ble Court had observed the following:-

"in the result the appeal is allowed and judgment and decree of the learned lower court are set aside. It is made clear that the defendants/respondents shall not forcibly interfere with the possession of the plaintiffs without taking recourse to appropriate remedy available under the law."

9. In spite of such clear finding and the petitioners being not made parties, who are in possession of the property in question, it is submitted that the learned Civil Judge (Junior Division), Athgarh ought not to have issued writ to the Civil Court Commissioner and bailiff to identify the decreetal land and deliver the possession by the bailiff as per judgment and decree in Civil Suit (1) 5 of 2004 and RFA No.3 of 2005.

10. Issue notice to the opposite parties by registered post / speed post with A.D., requisites for which shall be filed within three working days. If the requisites are filed within the time stipulated, Office shall send notice to the opposite parties fixing a short returnable date.

11. List this matter in the week commencing 15.07.2024 before the assigned Bench.

12. As an interim measure, the operation of the orders dated 10.05.2024 and 13.05.2024 vide Annexure-15 series shall be kept in abeyance till 19.07.2024.

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