
(2022) 01 OHC CK 0147
In the Orissa High Court
Case No : CMP No. 25 Of 2022

Rajendra Prasad Pradhan And Others	Vs	APPELLANT
Dr. N. Kishore Patnaik And Others		RESPONDENT

Date of Decision : 21-01-2022

Acts Referred:

Code of Civill Procedure, 1908 — Order 26 Rule 9

Citation : (2022) 01 OHC CK 0147

Hon'ble Judges : Arindam Sinha, J

Bench : Single Bench

Advocate : S.P. Mishra

Judgement

Arindam Sinha, J

1. Mr. Mishra, learned senior advocate appears on behalf of petitioners. He submits, his clients are defendant nos. 1, 2 and 3 in C.S. no.1 of 2018 filed in Court of Civil Judge (Senior Division), Berhampur. He submits, other defendants are government functionaries. Opposite party-plaintiff has filed the suit for declaration of title alleged over the property and his claim of restraint against encroachment by petitioners. His clients filed written statement.

Then opposite party filed petition under rule 9 in order XXVI, Code of Civil Procedure and by impugned order dated 18th December, 2021 Surveyor

Knowing Commissioner (SKC) was appointed. Said order is illegal and passed on material irregularity. There be interference.

2. Rule 9 in order XXVI gives discretion to the Court to require local investigation, inter alia, for purpose of elucidating any mater in dispute. It appears

from the suit that location of boundary wall constructed by petitioners, is a matter of dispute. However, Mr. Mishra wants to establish that no order for

commission can be made on a suit for declaration, without ascertaining title of plaintiff.

3. Issue notice along with copy of this order on opposite party no.1. Petitioner will put in requisites.

4. List on 4th February, 2022. The interim application will be considered on returnable date. Petitioner is at liberty to produce the order before the suit

Court and pray for adjournment.

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