

ORISSA HIGH COURT : C U T T A C K

CMP NO.319 OF 2022

In the matter of a Petition under Article 227 of the Constitution of India.

A F R

Zobeda Khatun : **Petitioner**

-Versus-

Md.Habibullah Khan & ors. : **Opp.Parties**

For Petitioner : M/s.S.A.Nayeem, M.Abid
& S.S.Akhtar

For Opp.Parties : None
(At the stage of Admission)

CORAM :
JUSTICE BISWANATH RATH

Date of hearing & Judgment :: 26.04.2022

1. This C.M.P. involves allowing an Application being moved by a third party in an Execution Proceeding taking resort to the provision under Order 21 Rules 97, 99 & 101 of C.P.C.

2. Assailing the impugned order, Mr.Nayeem, learned counsel for the Petitioner-Plaintiff submits that the third party having already moved an Application under Order 1 Rule 10 of C.P.C. and being defeated in his such move on rejection of the Application under Order 1 Rule 10 of C.P.C. had no scope for moving the Application on the selfsame issue in the guise of Order 21 Rules 97, 99 & 101 of C.P.C. Learned counsel for

the Petitioner however has no dispute with regard to the third party already involving in an independent Suit involving the same property and the third party having lost in the Suit undertaken an Appeal exercise where he has got a decree involving the very same property. Learned counsel for the Petitioner further submits that being aggrieved by the appellate decree in favour of the third party, the Plaintiff has come in Second Appeal bearing RSA No.571/2014, which is pending in this Court. In the background of rejection of an Order 1 Rule 10 of C.P.C. Application, the impugned order is opposed even involving a challenge to the entertainability of Application under Order 21 Rules 97, 99 & 101 of C.P.C.

3. Heard the submissions of the learned counsel for the Petitioner on admission. Considering the submission of the learned counsel for the Petitioner, this Court finds, undisputedly the third party moving the Application under Order 21 Rules 97, 99 & 101 of C.P.C. had undertaken an exercise of Civil Suit and after the loss in the Civil Suit, such party even undertaken the Appeal exercise and there is a decree in favour of such party involving the very same property involved in the Execution Proceeding at hand. Even though the Second Appeal is filed by the present Plaintiff, admittedly, the Second Appeal is pending for consideration of this Court and the appellate decree is not disturbed as of

now. Admittedly, there exist two decrees passed by two different courts at the instance of third party and the other at the instance of the Plaintiff-Petitioner involved here in the Execution Proceeding, i.e., the decree holder and the third party as Plaintiff in the other. For the opinion of this Court, the third party has definite stake in the event of execution of the decree in the earlier Suit is attained and has thus been rightly allowed to join the Execution Proceeding. So far as the ground assailing the impugned order that once such Appeal is rejected in exercise of power under Order 1 Rule 10 of C.P.C., there is no further scope to bring the Application under Order 21 Rules 97, 99 & 101 of C.P.C., this Court observes, exercise of power involving the Application under Order 1 Rule 10 of C.P.C. and exercise of power under the provision of Order 21 Rules 97, 99 & 101 of C.P.C. are completely different. Further scope under Order 21 Rules 97, 99 & 101 of C.P.C. is even much wider. In the circumstance, this Court finds, there is no prohibition in bringing such Application even after rejection of such endeavor in exercise of power under Order 1 Rule 10 of C.P.C.

4. In the circumstance and reading through the observations of the Executing Court, this Court finds, there is right exercise of power and the observation clearly discloses the findings of this Court even. In the

circumstance, this Court finds, there is no impropriety or illegality in allowing such Application requiring to be interfered with.

5. While approving the impugned order, this Court rejects this C.M.P. for having no merit.

.....
(Biswanath Rath, J.)

Orissa High Court, Cuttack.
The 26th April, 2022/M.K.Rout, A.R.-cum-Sr.Secy.

