



A.F.R.

IN THE HIGH COURT OF ORISSA AT CUTTACK

CMP No.1424 of 2026

CNR No.- ODHC010635932026

(In the matter of an application under Article 227 of the Constitution of India, 1950).

Amaresh Sarkar

....

Petitioner (s)

-versus-

Cuttack Durgabari Samity, Cuttack

& Ors.

....

Opposite Party (s)

Advocates appeared in the case through Hybrid Mode:

For Petitioner (s)

:

Mr. Bibekananda Bhuyan, Sr. Adv.

Along with

Mr. Sourav Suman Bhuyan, Adv.

For Opposite Party (s)

:

Mr. Surya Prasad Mishra, Sr. Adv.

Along with

Mr. Amlan Mishra, Adv.

(for O.P. No.1)

Mr. P.P. Behera, ASC (for O.P. Nos.2 & 3)

CORAM:

DR. JUSTICE SANJEEB K PANIGRAHI

DATE OF HEARING:-28.08.2026

DATE OF JUDGMENT:- 29.08.2026

Dr. Sanjeeb K Panigrahi, J.

1. The Petitioner has instituted the present Civil Miscellaneous Petition under Article 227 of the Constitution of India assailing the legality, propriety and correctness of the order dated 03.08.2026 passed by the learned 1st Addl. Senior Civil Judge, Cuttack, in C.S. No.9 of 2011/C.S. No.424 of 2022. By the impugned order, the learned Trial Court has



rejected the petition dated 23.07.2026 filed by the defendant No.3 (the present Petitioner) to mark the certified copy of the judgment and decree passed in F.A. No.16 of 1968 as exhibit and admit the same in evidence during the stage of argument. The impugned order, being devoid of reasons and reflecting complete non-application of judicial mind, has caused serious prejudice and grave hardship to the Petitioner. It is, therefore, liable to be set aside in exercise of the supervisory jurisdiction of this Court.

I. FACTUAL MATRIX OF THE CASE:

2. The brief facts of the case are as follows:

- (i) The present dispute pertains to a parcel of land situated in Cuttack town and principally concerns the nature and legal character of the possession exercised by Cuttack Durgabari Samity (Opposite Party No. 1) over the said property. Opposite Party No.1, as plaintiff, instituted C.S. No.09 of 2011 before the learned Civil Judge (Junior Division), 1st Court, Cuttack, against the present Petitioner and other opposite parties, seeking declaration of right, title and interest and exclusive possession over the suit schedule property, along with other consequential reliefs.
- (ii) Subsequently, the present Petitioner as plaintiff instituted C.S. No.424 of 2022 before the learned Civil Judge (Senior Division), 1st Court, Cuttack, seeking, *inter alia*, a decree for recovery of possession and permanent injunction in respect of the same property, together with other consequential reliefs.



- (iii) Since both the suits relate to the same suit property and substantially involve the same parties and interconnected questions of fact and law, the Petitioner approached the learned District Judge, Cuttack, by filing Tr. P. (Civil) No.06 of 2022, seeking transfer of C.S. No.09 of 2011 to the Court of the learned Civil Judge (Senior Division), Cuttack, where C.S. No.424 of 2022 was pending.
- (iv) The learned District Judge, Cuttack, allowed the said transfer petition and directed transfer of C.S. No. 09 of 2011 to the Court of the learned Additional Civil Judge (Senior Division), Cuttack, for analogous trial along with C.S. No.424 of 2022, with a further direction to dispose of both the suits by a common judgment.
- (v) The suit land was originally recorded under the Khasmahal in favour of Sri Rameswar Nath Suthoo (Defendant No.4) and Sri Motilal Pandit, the father of Defendant Nos.5 and 6, as pattadars. One Smt. Chandan Bilasini Dasi, wife of Late Kali Krushna Sarkar of Alamchand Bazar, Cuttack, was the darpatadar in respect of the suit property and was paying rent to the pattadars in whose names the land stood recorded.
- (vi) On 10.09.1967, Smt. Chandan Bilasini Dasi, being the darpatadar, granted a licence in favour of Cuttack Durga Bari Samiti, represented by the then President of the Samity, Sri Paritosh Kumar Bose (since dead). A deed of licence was executed by the parties on the same date in the presence of



witnesses, incorporating specific terms and conditions binding upon both parties.

- (vii) Under the terms of the said licence, the licensee was permitted to construct a compound wall, Mandap and thereafter Pandal, together with such other permanent and temporary structures as might be required for conducting Durga Puja, Laxmi Puja and other religious functions, as well as social and cultural activities as decided by the licensee. The deed further contained a specific stipulation that the descendants of the licensor would have no right to interfere with the possession of the licensee over the suit land.
- (viii) The licence also stipulated that it could be cancelled only in the event that the prescribed pujas were not performed for three consecutive years. Pursuant to the licence, the plaintiff-Samiti entered into possession of the suit property and has since remained in continuous, peaceful and undisturbed possession thereof.
- (ix) Over the years, the Samiti made substantial permanent constructions and developments upon the suit land from its own funds. These included a Puja Mandap constructed of brick and mortar with RCC roof, walls with iron-grill gates, a store room, stage and platform in front of the Puja Mandap, two shop rooms, a borewell and other ancillary structures. The constructions are of a permanent character and substantial



amounts have been expended by the Samiti for their construction and maintenance.

- (x) The Opposite Party/ Plaintiff-Samiti/Society claims to have been in exclusive, peaceful and uninterrupted possession of the suit land since 1967 under a licence granted by the concerned licensors/pattadars. According to the plaintiff, the licence has become irrevocable and neither the landlords nor the plaintiff has disputed the respective rights of the pattadars or the Khasmahal Authority.
- (xi) The Petitioner (Defendant No.3), claiming to be the adopted son and successor of Chandan Bilasini Dasi, subsequently obtained recognition of his claim as Darpattadar from the Hon'ble Supreme Court. The plaintiff contended that, as successor to the licensor, Defendant No.3 is also bound by the terms of the license, which prohibit interference with the plaintiff's possession.
- (xii) The plaintiff stated that it constructed a boundary wall around the suit property for protection of the property and facilitating the performance of puja ceremonies. A portion of the western boundary wall subsequently became damaged. When the plaintiff attempted to reconstruct the broken portion, Defendant No.3 allegedly obstructed the work and allegedly used anti-social elements to interfere with the plaintiff's possession and enjoyment of the property.



- (xiii) Consequently, the plaintiff instituted the aforesaid suit seeking protection of its possession and right to enjoy the suit land, including reconstruction of the damaged western boundary wall.
- (xiv) The Petitioner (defendant No.3 in the suit) has disputed the said deed of license in the suit. The present dispute arose when after closure of the evidence in the suit, the present Petitioner filed an application before the learned trial Court to mark a judgment of this Court to exhibit in the suit without even recalling their witnesses. The present Opposite Party No.1 also filed its objection.
- (xv) The learned trial Court rejected the said application on the ground that no explanation has been provided in the application. The said order of rejection is impugned in the present CMP by the Petitioner/ Defendant No.3.

II. SUBMISSIONS ON BEHALF OF THE PETITIONER:

- 3. The learned counsel for the Petitioner earnestly made the following submissions in support of his contentions:
 - (i) The Petitioner submits that the C.S. No.09 of 2011 filed by Cuttack Durgabari Samity (Opposite Party No.1, Plaintiff in the suit) against Shri Amaresh Sarkar (Petitioner, Defendant No.3 in the suit), Tahasildar, Cuttack Sadar (Defendant No. 2), among others. The Samity sought declaration of right, title, interest and exclusive possession over the suit land on the strength of an



unregistered lease deed executed by the adopting mother of the Petitioner (Defendant No. 3).

- (ii) Similarly, C.S. No.424 of 2022 filed by Shri Amaresh Sarkar (Petitioner in the present case, Plaintiff in the suit) against Cuttack Durgabari Samity (Opp. Party No.1 in the present case and Defendant No.1 in the suit). Shri Sarkar sought a decree for recovery of possession and permanent injunction.
- (iii) The suit land was originally held by Sri Ram Narayan Nath Sahoo and Sri Monilal Pandit as pattadars (landholders) under the Khasmahal (Government land administration). Smt. Chandan Bilasini Dasi, wife of late Kali Krushna Sarkar, was the darpatedar (sub-lessee) and paid rent. On September 10, 1967, Chandan Bilasini Dasi allegedly granted a lease-cum-license to Cuttack Durgabari Samity to construct a puja mandap (prayer hall) and other structures for religious and cultural functions. A deed of license was purportedly executed with certain conditions, including that the licensor's descendants could not interfere, and the license could only be cancelled if pujas were not performed for three consecutive years. The Samity claims to have constructed permanent structures (mandap, store room, stage, shop rooms, borewell) and spent significant funds, contending that the license has become irrevocable. They assert exclusive, undisturbed and peaceful possession since 1967, with a limited, non-evictable title. The Samity alleges that Shri Amaresh Sarkar (Defendant No.3 in the suit) is creating



disturbances and obstructing the reconstruction of a boundary wall.

- (iv) The petitioner (Defendant No.3 in the suit) claims to be the adopted son and successor-in-interest of Chandan Bilasini Dasi and his claim was later allowed by the Supreme Court in Civil Appeal No.2462 of 1977.
- (v) It is further contended that the alleged license deed (marked as Ext.3) is a fabricated document created by Samity members to unlawfully grab the property. The Samity only had permissive possession over the suit property. The said Chandan Bilasini Dasi, the adopting mother of the Petitioner was not legally competent to transfer or encumber the property, as it was bequeathed to her under a WILL by her husband- Kali Krishna Sarkar and she had only held a life interest over the same. Therefore, any license or lease granted by her is invalid. The Petitioner also stated that he revoked the permission granted to the Samity on November 5, 2016 & filed C.S. No.424/2022 for ejectment.
- (vi) Since both the suits pertain to the same property and parties, the learned District Judge, Cuttack transferred C.S. No.09 of 2011 to the court of the learned 1st Addl. Civil Judge (Sr. Divn.), Cuttack, for analogous trial with C.S. No.424 of 2022, with a direction for passing a common judgment.
- (vii) It is further contended that at the time for filing of Petitioner's impugned application that led to the impugned order, both civil



suits were at the argument stage. The application sought to mark the certified copy of the judgment and decree passed in F.A. No. 16/1968 (First Appeal No.16 of 1968) which has conclusively determined the adoption of the Petitioner and the alienable interest of late Chandan Bilasini Dasi.

- (viii) The learned 1st Addl. Senior Civil Judge, Cuttack rejected the said application on the ground that the Petitioner failed to provide a sufficient reason as to how the document was necessary for proper adjudication of the suits.
- (ix) It is further contended that the judgment and decree passed in F.A. No.16 of 1968 is critically important and should have been admitted. The Petitioner contended that this judgment is essential to determine the “fact in issue”, specifically, whether Opposite Party No.1 is in lawful possession of the suit property or merely has permissive possession. Moreover, the Opp. Party No.1 has disputed the adoption of the Petitioner and questioned his locus to maintain the suit.
- (x) It is further contended that the judgment, which was sought to be marked as exhibit passed by this Court, directly addressed the legal competence of Chandan Bilasini Dasi to transfer property. It explicitly stated that she was not competent to encumber or transfer properties bequeathed to her by her deceased husband’s WILL, as she only possessed a life interest in them. Consequently, a Sale Deed (document of sale) executed by her was set aside by this Court.



- (xi) The Opposite Party No.1's claim over the suit property is based on an unregistered lease deed (which was initially a license deed) allegedly executed by Chandan Bilasini Dasi. The judgment passed in F.A. No.16 of 1968 directly impacts Chandan Bilasini Dasi's power to alienate (transfer ownership) of the property, thereby affecting the genuineness and legal validity of the lease deed relied upon by Opposite Party No.1. The Petitioner highlights that Opposite Party No.1 in his written objection did not deny the relevancy of the document but only objected to its admission on the grounds of delay in the trial.
- (xii) Learned Senior counsel has also placed reliance in the case of ***Billa Jagan Mohan Reddy & Anr. v. Billa Sanjeeva Reddy & Ors.***¹, wherein the Hon'ble Supreme Court has held as follows:-

"4. Order 13, Rule 1 provides thus:

"1. Documentary evidence to be produced at or before the settlement of issues.— (1) The parties or their pleaders shall produce, at or before the settlement of issues, all the documentary evidence of every description in their possession or power, on which they intend to rely, and which has not already been filed in Court, and all documents which the Court has ordered to be produced.

(2) The Court shall receive the documents so produced: Provided that they are accompanied by an accurate list thereof prepared in such form as the High Court directs." It is clear from its bare reading that the parties or their counsel shall be required to produce all the documentary evidence in their possession or power which they intend to rely on to establish their right along with pleadings or before settlement of the issues. The court is enjoined

¹ (1994) 4 Supreme Court Cases 659



under sub-rule (2) to receive such documents provided they are accompanied by an accurate list thereof prepared in the prescribed form. If they are not in the party's possession or custody, it shall be filed by the party along with an application to condone the delay in filing them. The explanation for delay is not as rigorous as one filed under Section 5 of the Limitation Act. These documents were not in the possession or custody of the appellants, but they have obtained certified copies from the Revenue Authorities and sought to be produced. It is undoubted that there is a delay in production of the said documents. But the trial court had stated that the application was filed at the stage of arguments, seeking to produce those documents and sought to rely upon the documents. It is settled law that, if the documents are found to be relevant to decide the real issue in the controversy, and when the court felt that interest of justice requires that the documents may be received, exercising the power under Order 41, Rule 27 CPC the appellate court would receive the documents and consider their effect thereof. When such is the position, when the documents are sought to be produced in the trial court, before the arguments are completed, normally they may be received; an opportunity given to prove them and rebuttal if any and their relevance and effect they may have, be considered in deciding the issues arising in the controversy. Under these circumstances, the trial court was not justified in refusing to condone the delay and to receive the documents. The High Court also committed the same error in not considering the effect in this behalf in the right perspective. The orders are accordingly set aside and the delay in filing the documents is condoned. The trial court is directed to receive the documents, give an opportunity to the parties to prove the documents and if necessary, opportunity to the respondent to rebut the same and then dispose of the reference according to law."



(xiii) In view of the above submission and taking into account the ratio laid down by the Hon'ble Supreme Court, learned counsel for the Petitioner seeks to allow the CMP and allow the Petitioner to exhibit the aforesaid document in the suit.

III. SUBMISSIONS ON BEHALF OF THE OPPOSITE PARTY NO.1:

4. *Per contra*, the learned counsel for Opposite Party No.1 earnestly made the submission that the present CMP deserves to be rejected in limine.

(i) The Opposite Party No.1 submitted that, the so-called document vide Annexure-8 which the Petitioner had prayed before the learned Trial Court to mark as an exhibit, is a Judgment of this Court. The certified copy of the said Judgment was obtained in the year 2004 which is absolutely clear from the last page of the said document. The Petitioner in his Petition before the learned Trial Court (Annexure-5) has not provided any explanation as to why the said document was not filed at the time of filing of Written Statement or settlement of issues or even at the time of evidence. Only after closure of the evidence the Petitioner (Defendant No.3) filed an application to mark the present document as an exhibit.

(ii) It is clear that only to avoid cross-examination with respect to the said document the Petitioner (Defendant No.3) very cleverly wants to exhibit the document after closure of the evidence. It is a right of this Opposite Party No.1 being the Plaintiff in the suit to cross-examine the witnesses.



- (iii) The Petitioner has also not mentioned as to how the present document is relevant to the facts of the present Case. Fact remains that the said judgment/document does not involve the present Opposite Party No.1 and nor does it involve the present Suit land. Also, no explanation has been provided as to why the document was not filed at the time of evidence. The learned Trial Court has rightly rejected the petition of the Petitioner on this ground alone.
- (iv) It is submitted that the said document vide Annexure-8 is a judgment of this Court. A judgment of this Court can be relied upon at any stage of the case. The same cannot and need not be marked as an exhibit.
- (v) The Petitioner at the time of argument of the present CMP stated that Opposite Party No.1 has disputed the adoption of the Petitioner and that is why the present document is relevant. The same is totally incorrect. The Opposite Party No.1 in fact, admits that the Petitioner is the adopted son of Kali Krushna Sarkar (father) and Chandan Bilasini Dasi (mother). The said admission is evident from the cause title of the Plaint filed by this Opposite Party No.1 wherein Defendant No.3 (Petitioner) has been reflected as the son of Kali Krushna Sarkar. Therefore, the said document is not at all relevant for the adjudication of the suit and is being filed just to delay the entire Suit.
- (vi) Even if the present CMP is dismissed and the said document is not marked as an Exhibit in the Suit, still then the Petitioner can



rely on the said document as the same is a Judgment of this Court. Therefore, no prejudice will be caused to the Petitioner in any manner. But, on the contrary, if the said document is allowed to be marked as an Exhibit, then the Opposite Party No.1 will be deprived of its valuable right to cross-examine the witness of the Petitioner with respect to the present document and this document will go to trial without being put to cross-examination. It is a settled law that at no cost the right of cross-examination of party can be taken away. Therefore, the learned trial Court has rightly rejected the petition of the Petitioner.

- (vii) Learned counsel also relied upon the decision of the Supreme Court in the case of *Bagai Construction (through its proprietor Lalit Bagai) v. Gupta Building Material Store*², wherein it has been held as follows:

“15. After change of various provisions by way of amendment in CPC, it is desirable that the recording of evidence should be continuous and followed by arguments and decision thereon within a reasonable time. This Court has repeatedly held that courts should constantly endeavour to follow such a time schedule. If the same is not followed, the purpose of amending several provisions in the Code would get defeated. In fact, applications for adjournments, reopening and recalling are interim measures, could be as far as possible avoided and only in compelling and acceptable reasons, those applications are to be considered. We are satisfied that the plaintiff has filed those two applications before the trial court in order to overcome the lacunae in the plaint, pleadings and evidence. It is not the case of the plaintiff

² (2013) 14 Supreme Court Cases 1



that it was not given adequate opportunity. In fact, the materials placed show that the plaintiff has filed both the applications after more than sufficient opportunity had been granted to it to prove its case. During the entire trial, those documents have remained in exclusive possession of the plaintiff, still the plaintiff has not placed those bills on record. It further shows that final arguments were heard on a number of times and the judgment was reserved and only thereafter, in order to improve its case, the plaintiff came forward with such an application to avoid the final judgment against it. Such course is not permissible even with the aid of Section 151 CPC."

(viii) He has also placed reliance in the case of ***Pitani Sai Ganesh Kumar v. Pitani Nagamani & Ors.***³, wherein this Court has held as follows:

"9. After closure of evidence, the plaintiff filed an application to mark the certified copy of RSD No. 10161201295 dated 26.12.2012 and the certified copy of deed of re-conveyance dated 29.8.2000 as exhibits. The plaintiff was in possession of the deed of re-conveyance since 2000 and the sale deed since 2012. No plausible explanation has been offered to the satisfaction of Court for not filing the documents on or before the settlement of issues. The object of Order 13 Rule 1 CPC is to lay down the stage when a party shall file documentary evidence so that each knows on what document the other party seeks to rely and gets ready for trial. Merely using the words "unavoidable circumstances" are not suffice. The discretionary power of the Court has to be used sparingly. The said power is not intended to be used to fill up omissions in the evidence. In the wake of aforesaid, the petition, sans merit, deserves dismissal. Accordingly,

³ In CMP No.1534 of 2014 decided on 10.02.2017



the same is dismissed. There shall be no order as to costs."

- (ix) In view of the above, learned Senior Counsel contended that the impugned order dated 03.08.2026 passed by the learned trial Court rejecting the petition of the Petitioner is totally correct and legal.

IV. FINDING OF THE LEARNED TRIAL COURT:

5. On perusal of the petition, case records and other relevant documents, learned trial court found that no reason has been assigned in the petition explaining the manner in which the document is necessary for proper adjuration of the suits. Merely stating in the petition that the document would throw some light for adjudication of the issues involved in the suits, is not sufficient to accept the document at the stage when the suits have matured for argument and should cause unnecessary hardship to the Opposite Party. Accordingly, the learned trial Court dismissed the petition filed by the Petitioner vide order dated 03.08.2026, which is impugned herein.

V. COURT'S REASONING AND ANALYSIS:

6. Heard learned Senior Counsel for the parties and perused the record placed before the Court. The principal question falling for consideration is a narrow one. It is whether a certified copy of the judgment of this Court in First Appeal No.16 of 1968 may be received in evidence and marked as an exhibit in two analogously tried suits which have reached the stage of argument. The question wears a



procedural dress though its consequence is not procedural at all. A document shut out at this stage is a document which the trial court shall never see. A finding on title rendered without it, is a finding rendered upon a record which both sides know to be incomplete.

7. It is necessary at the threshold to state what this Court does not intend to decide whether Chandan Bilasini Dasi was competent to execute the deed dated 10.09.1967 nor does it decide whether that instrument is a licence or a lease. It also does not decide whether the possession of Opposite Party No.1 is lawful or permissive. These are the questions which the learned trial court shall answer in the common judgment. The solitary question for consideration in the present case is whether the learned trial court was justified in refusing to permit a public record of this Court to come in the file.
8. The Civil Procedure Code deals with the stage of production of documents with some care especially in Order VII Rule 14(3) which provides that a document which ought to have been produced by the plaintiff along with the plaint and is not so produced shall not be received in evidence on his behalf at the hearing of the suit without the leave of the Court. Order VIII Rule 1-A(3) makes identical provision for a defendant. Order XIII Rule 1 requires the parties to produce their documentary evidence in original on or before the settlement of issues. Order XVIII Rule 17-A which permitted reception of evidence not previously within the knowledge of a party stood deleted with effect from 01.07.2002.



9. The petitioner occupies both positions in the two suits. He is Defendant No.3 in C.S. No.09 of 2011 and plaintiff in C.S. No.424 of 2022. Order VIII Rule 1-A(3) governs him in the former and Order VII Rule 14(3) in the latter. Both provisions employ the same three words that is “without the leave of the Court”. So, the Code, therefore, erects any sort of bar for accepting rather it erects a discipline and entrusts the relaxation of that discipline to judicial discretion.
10. The effect of the deletion of Order XVIII Rule 17-A stands authoritatively explained in *K.K. Velusamy v. N. Palanisamy*⁴ wherein it was held that the deletion does not mean that no evidence can be received after a party closes its evidence. It means that the amended Code contemplated little or no interval between the close of evidence and the conclusion of argument. Where such an interval does arise and a party comes upon evidence which it could not lay hands upon earlier, in that event the court may in exercise of its inherent power under Section 151 permit its production, if the same is relevant and necessary in the interest of justice and subject to such terms as may be imposed. The same decision also cautions that Order XVIII Rule 17 is no device for filling up gaps and that the power must be used sparingly. Both limbs of that holding must be given effect. Here, the one restrains and the other preserves. Similar views have been echoed by Supreme Court in *Shubhkaran Singh Vrs. Abhayraj Singh & Ors.*⁵ and *K. Bharathamma Vrs.- Bandaru Sakku Bai & Ors.*⁶.

⁴ 2011 (11) SCC 275

⁵ (2025) SCC Online SC 1028



11. The power so conferred is out and out discretionary and its exercise is not mechanical or casual. In *Kanda v. Waghu*⁷ the Privy Council has very succinctly held that where the question is one of admitting public records at a later stage, the court has a discretion and that generally speaking, it would be a wise exercise of that discretion to admit such evidence. It was further held that the question must be decided in each case depending on its own circumstances. That formulation has lost none of its force even today. It furnishes the answer to much of the argument advanced at the Bar.
12. In *Kumar Gopika Raman Roy vs Atal Singh*⁸ wherein it has been held that the Court has a discretion, and while generally speaking it will be a wise exercise of the discretion to admit such evidence which has been put thus:

“the rule of exclusion, however, only comes into operation when the documents on which the parties rely should have been, but were not, produced at the first hearing. Now, according to the evidence at the date of the first hearing, three documents were not in the possession or power of the plaintiff, and the plaintiff and his advisers did not know of their existence so as to enable them to inspect them and form an opinion as to whether they would rely on them or not. In these circumstances it cannot be said that they should have been produced at the first hearing and therefore the rule does not authorise the exclusion. Further, as has been held in India, even where the rules of exclusion apply and the documents cannot be filed without the leave of the Court, that leave should not ordinarily be refused where the

⁶ (2026) SCC Online SC 1484

⁷ AIR 1950 PC 68

⁸ (1929)31BOMLR734



documents are official records of undoubted authenticity which may assist the Court to decide rightly the issues before it".

13. In a case where leave is sought to bring a document on record after evidence has been closed, the court must satisfy itself upon two things that is, the first is whether the document is relevant and necessary for a proper adjudication of the controversy and the second is whether the delay stands explained and if it does not whether as to the default is such that the party must be shut out or whether it can be compensated in terms. Both the enquiries are obligatory.
14. In the present case, the impugned order dated 03.08.2026 records that no reason has been assigned in the petition explaining the manner in which the document is necessary for proper adjudication of the suits. It further records that a mere statement that the document will throw some light is not sufficient at a stage when the suits have become matured for argument and that exhibit of the documents at belated stage would cause unnecessary hardship to the opposite party. Relevance is not established by the adjectives employed in a petition rather, it is established by the relation which the document bears to the issues and that relation is to be found in the record. The learned trial court had before it, the plaint and the written statements and the issues and the evidence. It was not confined to the four corners of the application where the bearing of the document was apparent from the file itself. Delay and inconvenience may be an important consideration to refuse but so long as the trial is alive and the court retains the



power to impose terms by permitting recall or by allowing rebuttal by an award of costs.

15. The authenticity of the documents which is sought to be produced is not going to be tested in the cross examination and is also not open to doubt. The objection by the respondent has been confined to the timing of production and to relevance. It pleads further that the earlier round of litigation concerning the estate of Kali Krushna Sarkar travelled up to the Supreme Court. The document now tendered is the documentary counterpart of a plea which has stood upon the record since 2016. A party who seeks to prove what he has pleaded is not filling up a lacuna. He is discharging a burden which he assumed when he filed his written statement.
16. In *Billa Jagan Mohan Reddy v. Billa Sanjeeva Reddy*⁹ wherein the Supreme Court has held that where documents are found relevant to decide the real issue in the controversy and are sought to be produced in the trial court before the arguments are completed they may normally be received with an opportunity to prove them and to rebut them and with their relevance and effect being considered while deciding the issues. It was held that the trial court in that case was not justified in refusing to condone the delay. A delay which can be compensated in costs does not become a ground of forfeiture merely because it is long.

⁹ (1994) 4 SCC 659



17. Further, a limited recall is not a trial *de novo*. The submission that exhibiting of a single public document would compel the trial to begin afresh does not bear scrutiny.
18. One of the objections raised in vehemence by the Respondent is that a judgment of this Court may be relied upon at any stage and need not be marked as an exhibit. The submission overlooks a distinction of some importance. A judgment cited as an authority is a source of law. It is addressed to the court and it binds by reason of what it lays down and it needs no exhibit. A judgment tendered for what it adjudicated between particular persons in respect of particular property is a fact. Facts come upon the record only through evidence. The petitioner tenders this judgment for the latter purpose. It must therefore be exhibited if it is to be used at all.

VI. CONCLUSION:

19. In view of the foregoing analysis and upon careful consideration of the material facts and circumstances of the case, this Court is of the considered opinion that the order dated 03.08.2026 cannot be sustained. It does not advert to the public character of the document or to the consequence that it requires no proof.
20. In the result C.M.P. No.1424 of 2026 is allowed upon the following terms.
 - (i) The order dated 03.08.2026 passed by the learned 1st Additional Civil Judge (Senior Division) Cuttack in C.S. No.09 of 2011 and C.S. No.424 of 2022 is quashed.



(ii) The application of the petitioner for exhibition of the certified copy of the judgment and decree in First Appeal No.16 of 1968 is allowed. The learned trial court shall receive the document and mark it as an exhibit from the side of Defendant No.3 in C.S. No.09 of 2011 and the plaintiff in C.S. No.424 of 2022.

(iii) The marking shall be subject to all objections of Opposite Party No.1 as to the relevance and admissibility and evidentiary value of the document including its relevance under Sections 40 to 43 of the Evidence Act and the extent to which it operates against one who was no party to that appeal. All such objections are kept open and shall be decided by the learned trial court in the common judgment.

(iv) Opposite Party No.1 shall be at liberty to recall D.W.2 for cross-examination confined to the said document and to lead rebuttal evidence limited to it if so advised. Any such application shall be filed within two weeks of the appearance of the parties before the learned trial court and shall be disposed of forthwith.

(v) The petitioner shall pay costs of Rs.20,000 to Opposite Party No.1. Payment of such costs shall be a condition precedent to the marking of the document and in default the impugned order shall stand revived.

(vi) The parties shall appear before the learned trial court on the date fixed without unnecessary adjournment. The learned trial court shall hear and dispose of both the suits by a common



judgment as expeditiously as possible and preferably within three months of that date.

21. It is made clear that the observations herein are confined to the question of the exhibition of the document in evidence. Nothing stated shall be construed as an expression of opinion upon the competence of any document or any evidence. All such issues shall be decided by the learned trial court uninfluenced by this order.
22. The C.M.P. is disposed of, accordingly.
23. Interim order, if any, passed earlier stands vacated.

(Dr. Sanjeeb K Panigrahi)
Judge

*Orissa High Court, Cuttack,
Dated the 29th August, 2026/*