



IN THE HIGH COURT OF ORISSA AT CUTTACK

CMP No.460 of 2026

CNR No. ODHC010175692026

Jitendriya Satpathy *Petitioner(s)*
Mr. Prabhu Prasanna Beheera, Adv.
Ms. Sthiti Pragyan Sunandini, Adv.
versus-
Rastriya Gramanchal *Opposite Party(s)*
Seba Samiti, Gudianali,
Dhenkanal

CORAM:

HON'BLE DR.JUSTICE SANJEEB K PANIGRAHI

ORDER

27.08.2026

Order No.

02.

1. This matter is taken up through hybrid arrangement.
2. In filing the present CMP, the Petitioner being the defendant in the proceeding below, has challenged the impugned order dated 22.11.2025 passed by the learned Additional Senior Civil Judge, Dhenkanal in C.S. No.172/2019.
3. Heard.
4. The Opposite Party / Plaintiff has filed a suit vide C.S. No.172 of 2019 before the Court of learned Additional Civil Judge (Sr. Divn.), Dhenkanal with an allegation of encroachment of his own land by the Petitioner. In the said suit, since the allegation of construction of a high-



rise building over the private property of the Opposite Party / Plaintiff by the Petitioner is made, the Opposite Party in order to ascertain the extent of encroachment, had filed an application under Order XXVI Rule 9 of the C.P.C in the said Suit for deputing a Survey Knowing Advocate Commissioner whereas, the Petitioner being the defendant had filed a petition under Section 9 of the C.P.C for dismissal of the said suit vide C.S. No.172/2019.

5. Learned counsel for the Petitioner submits that both the petitions i.e. Section 9 of the C.P.C and the order XXVI Rule 9 of the C.P.C, were heard together. When the petition at the instance of the Petitioner under Section 9 of the C.P.C was rejected, the petition at the instance of the Opposite Party under Order XXVI Rule 9 of the C.P.C. was allowed vide impugned order dated 22.11.2025.
6. He further contends that evidence in the suit has not yet commenced and the Plaintiff has not yet filed evidence. By way of filing an application for appointment of the Survey Knowing Advocate Commissioner, the Plaintiff is only trying to collect evidence, which is not permissible in law.
7. According to the learned counsel for Petitioner, though hearing was conducted pertaining to the Section 9 petition at the instance of the Petitioner, on the same date



the petition at the instance of the Opposite Party under Order XXVI Rule 9 of the C.P.C was allowed at the later stage without even hearing the Petitioner. Hence, the Petitioner is suffering immensely. He, accordingly, prays for allowing the prayer made in the present CMP.

8. Considering the submission made on behalf of the Petitioner and since the petition for appointment of the Survey Knowing Advocate Commissioner under Order XXVI Rule 9 of the C.P.C is stated to have been passed without hearing the Petitioner, this Court while setting aside the impugned order dated 09.01.2026 pertaining to allowing of the petition under Order XXVI Rule 9 of the C.P.C only, remits the matter back to the learned Additional Civil Judge (Sr. Divn.), Dhenkanal for adjudicating the said petition afresh as per law.
9. The learned Civil Judge (Sr. Divn.), Dhenkanal is directed to adjudicate the petition under Order XXVI Rule 9 of the C.P.C after providing adequate opportunity of hearing to all the parties concerned.
10. This CMP is, accordingly, disposed of.

(Dr. Sanjeeb K Panigrahi)
Judge