**(2025) 10 OHC CK 0026**

**Orissa HC**

**Case No:** C.M.P. No.1133 Of 2024

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| Charulata Beura & Another | APPELLANT |
| Vs | |
| Ranjana Pradhan & Others | RESPONDENT |

**Date of Decision:** Oct. 24, 2025

**Acts Referred:**

- Civil Procedure Code, 1908 — Section 89, 89(1), Order 10 Rule 1A, Order 23 Rule 1
- Civil Procedure Mediation Rules 2007 — Rule 25
- Legal Services Authority Act, 1987 — Section 20(1)

**Hon'ble Judges:** Sashikanta Mishra, J

**Bench:** Single Bench

**Advocate:** K.M. Dhal, D.P. Mohanty

**Final Decision:** Allowed

**Judgement**

Sashikanta Mishra, J

1. The petitioners, who are plaintiffs in C.S. No.992 of 2017 pending in the Court of learned Additional Civil Judge (Senior Division) Cuttack, have filed this application seeking to challenge the order dated 27.06.2024 passed by the said Court in refusing to decree the suit in terms of the settlement arrived between the parties by way of mediation.

2. The suit in question has been filed by the plaintiffs inter alia, seeking the following relief:-

*“(A)That a decree declaring that the plaintiffs have right of user of the “A”schedule property as passage may be declared and theirsuch user over the same may be confirmed.*

*(B)That a decree for perpetual injunction may be passed against the defendants restraining them from raising any construction on any portion of the “A”schedule property and interfering with the user of the same as passage in any manner whatsoever.*

*(C)That in case the defendants raise any construction over any portion of the "A"schedule property during the pendency of the suit a decree for mandatory injunction may be passed directing them to remove the obstruction within the time fixed by the Court failing which the obstruction may be removed through the process of the Court at the cost of the plaintiffs.*

*(D) That a decree for cost may be passed against the defendants.*

*(E) That the plaints may be granted such other relief or reliefs to which they may be found entitled under law and equity."*

3. Defendant-Opposite Party Nos.2 and 3 are the only contesting parties. During pendency of the suit, the parties decided to settle the dispute amicably for which, they filed the petition under Section 89 of CPC on 12.12.2022 with prayer to refer the case to mediation. Such prayer of the parties was allowed and the suit was referred to one Santosh Kumar Mohanty, Mediator. After discussion in the mediation proceeding, the parties ultimately decided to resolve the dispute on 12.02.2024.

4. Both parties admitted that the disputed land being Government land, they have no manner of right, title, interest or possession over the suit property and as such, they will not raise any claim thereon. It was further agreed that they shall not obstruct each other from using the suit property including the passage over the disputed plot and shall not construct any permanent structure. The mediation was thus successful and the mediator submitted his report before the trial Court.

5. Both parties prayed for acceptance of the report and to pass a decree in accordance therewith. The trial Court however, after perusing the report, though accepted the same but was not inclined to pass decree on the ground that a decree of declaration cannot be passed upon mere compromise/understanding entered into between the parties and that for such decree, positive evidence must be led.

6. Holding thus, the trial Court by the impugned order held that if the parties have resolved their dispute and do not want to litigate further, the plaintiffs are at liberty to resort to the provision under Order XXIII Rule 1 of the CPC.

7. Heard Mr. K.M. Dhal, learned counsel appearing for the plaintiff-Petitioners and Mr. D.P. Mohanty, learned counsel appearing for the defendant-Opposite Parties.

8. Mr. Dhal argues that the parties having resolved their dispute amicably through mediation and the trial Court having accepted the report of the Mediator, the suit ought to have been decreed in terms of the settlement arrived at between the parties. Mr. Dhal further argues that the suit for declaration of the easementary right having itself been referred to mediation by the trial Court, the view that a suit for declaration cannot be decreed on a mere compromise/understanding entered into between the parties is contradictory as well as contrary to the provision under Section 89 of the CPC.

9. Mr. Dhal has referred to the judgment of the Supreme Court in the case of Afcons Infrastructure Limited Vs. Cherian Varkey Construction Company (P) Limited (2010) 8 SCC 24 and submits that the Supreme Court in the said case has clarified as to which cases are suitable for mediation and which are not. The present case does not fall within the excluded categories mentioned therein.

10. Mr. D.P. Mohanty adopts the arguments of Mr. Dhal and additionally submits that the Supreme Court in Afcons Infrastructure Limited(supra) specifically held that disputes between neighbours relating to easementary rights etc. are suitable for ADR processes including mediation. The Court below has proceeded on a misconceived notion that the suit being one for declaration cannot be decreed on the basis

of a compromise.

11. By way of an amendment which came into force on 01.07.2002, Section 89 of CPC was substituted and the amended provision is reproduced below:-

***"89, Settlement of disputes outside the Court-***

*(1) Where it appears to the Court that there exist elements of a settlement which may be acceptable to the parties, the Court shall formulate the terms of settlement and give them to the parties for their observations and after receiving the observations of the parties, the Court may reformulate the terms of a possible settlement and refer the same for:-*

*(a) arbitration;*

*(b) conciliation;*

*(c)judicial settlement including settlement through Lok Adalat; or*

*(d) mediation.*

*(2) Where a dispute has been referred-*

*(a) for arbitration or conciliation, the provisions of the Arbitration and Conciliation Act, 1996 (26 of 1996) shall apply as if the proceedings for arbitration or conciliation were referred for settlement under the provisions of that Act,*

*(b) to Lok Adalat, the Court shall refer the same to the Lok Adalat in accordance with the provisions of sub-section (1) of section 20 of the Legal Services Authority Act, 1987 (39 of 1987) and all other provisions of that Act shall apply in respect of the dispute so referred to the Lok Adalat;*

*(c) for judicial settlement, the Court shall refer the same to a suitable institution or a person and such institution or per person shall be deemed to be a Lok Adalat and all the provisions of the Legal Services Authority Act, 1987 (39 of 1987) shall apply as if the dispute were referred to a Lok Adalat under the provisions of that Act;*

*(d) for mediation, the Court shall effect a compromise between the parties and shall follow such procedure as may be prescribed."*

12. Clause (d) of sub-Section (2) makes it clear that the Court has the power to effect a compromise between the parties in cases where the dispute has been referred to mediation. The procedure for mediation is governed under Civil Procedure Mediation Rules, 2007 the relevant provisions of which shall be referred to later.

13. Thus, alternative dispute resolution has become a statutory imperative in cases that have elements of settlement. In fact, it is mandatory for the Court to consider at the time of first hearing, if the matter could be settled outside the Court as per Section 89(1) by opting for any of the modes prescribed thereunder. This has been expressly provided under Order X Rule 1-A, which is reproduced below.

*"1A. Direction of the court to opt for any one mode of alternative dispute resolution.-After recording the admissions and denials, the court shall direct the parties to the suit to opt either mode of the settlement outside the court as specified in sub-section (1) of section 89. On the option of the parties, the court shall fix the date of appearance before such forum or authority as may be opted by the parties."*

14. Interpreting these provisions the Supreme Court in Afcons Infrastructure Limited(supra) held as follows:-

*"26. Section 89 starts with the words "where it appears to the Court that there exist elements of a settlement". This clearly shows that cases which are not suited for ADR process should not be referred under Section 89 of the Code. The Court has to form an opinion that a case is one that is capable of being referred to and settled through ADR process. Having regard to the tenor of the provisions of Rule 1-A of Order 10 of the Code, the Civil Court should invariably refer cases to ADR process. Only in certain recognised excluded categories of cases, it may choose not to refer to an ADR process. Where the case is unsuited for reference to any of the ADR processes, the Court will have to briefly record the reasons for not resorting to any of the settlement procedures prescribed under Section 89 of the Code. Therefore, having a hearing after completion of pleadings, to consider recourse to ADR process under Section 89 of the Code, is mandatory. But actual reference to an ADR process in all cases is not mandatory. Where the case falls under an excluded category there need not be reference to ADR process. In all other cases reference to ADR process is a must."*

*[Emphasis added*]

15. As already stated, in the instant case the trial Court, on the prayer of the parties referred their dispute to mediation. This implies that the Court was of the view that the dispute could be settled through mediation as otherwise such a reference would not have been made. Having itself made the reference, this Court fails to understand as to how it was held that though the dispute was settled, no decree recording such settlement could be passed. In the case of Afcons Infrastructure Limited (supra), the Supreme Court by way of illustration listed the cases which are normally not suitable for ADR process. Having regard to their nature, the suits for declaration of title against the Government have been held to be one of such cases.

In the instant case, however, though a declaration was sought for yet the same was exclusively with regard to the right of user over the scheduled property as passage and injunction. In short, no declaration of title was sought for against the Government. The Supreme Court in the said decision has also held that all cases other than those held to be unsuitable for ADR process are normally suitable. The observations of the Supreme Court in this regard are extracted below:-

*"All other suits and cases of civil nature in particular the following categories of cases (whether pending in civil Courts or other special tribunals/forums) are normally suitable for ADR processes:-*

*(i)All cases relating to trade, commerce and contracts, including*

*XXX* *XXX* *XXX*

*XXX* *XXX* *XXX*

*XXX* *XXX* *XXX*

*(iii)All cases where there is a need for continuation of the preexisting relationship in spite of the disputes, including*

• *Disputes between neighbours (relating to easementary rights, encroachments, nuisance, etc.);*

*XXX* *XXX* *XXX*

*XXX* *XXX* *XXX*

*XXX* *XXX* *XXX*

16. The disputes between the neighbours relating to the easementary rights are clearly mentioned as being suitable for mediation. The plaintiffs and the defendants are adjoining land owners, each claiming right of passage over the scheduled land, which admittedly belongs to the Government. The parties do not claim any title against the Government and in fact, agreed not to raise any such claim. The dispute was thus settled with the parties agreeing to have equal access to the passage. The agreement as above was recorded by the mediator who submitted a report before the Court. Rule 25 of the Civil Procedure Mediation Rules 2007, being relevant is reproduced below:-

***"25. Court to fix a date for recording settlement and passing decree:-***

*(1) Within seven days of the receipt of any settlement, the Court shall issue notice to the parties fixing a day for recording the settlement, such date not being beyond a further period of fourteen days from the date of receipt of settlement, and the Court shall record the settlement, if it is not collusive.*

*(2) The Court shall then pass a decree in accordance with the settlement so recorded, if the settlement disposes of all the issues in the suit.*

*(3) If the settlement disposes of only certain issues arising in the suit, the Court shall record the settlement on the date fixed for recording the settlement and:-*

*(i) if the issues are severable from other issues and if a decree could be passed to the extent of the settlement covered by those issues, the Court may pass a decree straightway in accordance with the settlement on those issues without waiting for a decision of the Court on the other issues which are not settled;*

*(ii) if the issues are not severable, the Court shall wait for a decision of the Court on the other issues which are not settled."*

17. Thus, once the dispute has been settled and a report submitted before the Court, there is no other option available for the Court than to pass a decree in accordance with the settlement, subject of course to the situations envisaged under sub-Rule (3).

18. Perusal of the impugned order reveals that the Court below, despite accepting the report of the mediator did not proceed to pass a decree in terms thereof and rather asked the plaintiff to adduce evidence. Firstly, the entire exercise undertaken in terms of Section 89 read with Order 10 Rule 1-A of CPC stood nullified and secondly, the mandate of Rule 25 of Civil Procedure Mediation Rules was not complied with. For the above reasons therefore, the impugned order cannot be sustained in the eye of law.

19. For the foregoing reasons therefore, the CMP is allowed. The impugned order is set aside. The Court below is directed to pass appropriate decree for disposal of the suit in terms of the compromise between the parties as per the report submitted by the mediator.