

IN THE HIGH COURT OF ORISSA AT CUTTACK

C.R.P. No.20 of 2008

Rama Chandra Majhi.

....

Petitioner

M/s. Niranjana Lenka, Subodh Pradhan,
S. Mohanty, Advocates

-versus-

Suresh Chandra Morandi.

....

Opposite Party

M/s. Samir Kumar Mishra,
Malaya Ranjan Dash, Advocates

**CORAM:
JUSTICE S. PUJAHARI**

**ORDER
04.01.2022**

**Order
No.**

27. **1.** The order dated 26.02.2008 passed by the learned Civil Judge (Senior Division), Baripada, in Execution Case No.11 of 2007 is called in question by the decree-holder under Section 115 of the Code of Civil Procedure.
- 2.** Heard the learned counsel for the parties and perused the relevant papers on record.

3. The present petitioner's Title Suit bearing No.342 of 1998 filed before the Court of the Civil Judge (Senior Division), Baripada was dismissed as per the judgment dated 04.02.2003 passed by the trial Court, and upon appeal, the learned Addl. District Judge (FTC), Baripada, vide his judgment dated 14.02.2007 in R.F.A. No.29 of 2007, ordered as follows:-

I. The appeal is hereby allowed on contest.
II. The respondent-defendant is hereby directed to execute a registered sale deed in respect of the suit land in favour of the plaintiff within 31.3.2007 on receipt of Rs.8000/- (Rupees Eight thousand) from the plaintiff who shall pay the same to the defendant on or before 20.3.07. It is made clear that if the plaintiff fails to make the payment by the stipulated date he would lose his right to repurchase the suit land for ever and on the other hand, if the defendant fails to execute and register the sale deed by the date fixed the plaintiff would be entitled to get it registered through the court in accordance with law.

III. Upon registration of the sale deed the defendant is directed to deliver the vacant possession of the suit land to the plaintiff on the date of the registration itself or on 31.3.07 whichever is earlier and,

IV. Accordingly the judgment of the Civil Judge (Senior Division), Baripada dated 4.2.03 in T.S. No.342/98 dismissing the plaintiff's suit is hereby set aside. No cost."

4. The plaintiff-decree holder (present petitioner) filed Execution Case No.11 of 2007 before the trial Court seeking for getting the sale deed executed by the defendant-judgment debtor on receiving the consideration money of Rs.8000/-, on the ground that although in terms of the decree granted by the appellate court he offered the consideration money to the defendant within the stipulated time, the latter refused to accept the same with a plea that he had spent around seventy thousand rupees in the litigation. In the Execution proceeding the defendant-judgment debtor filed objection taking a ground that since the plaintiff avoided to follow the order of the appellate court by not paying the consideration money, his right to purchase the property was lost. The learned Executing Court vide the impugned order dismissed the Execution petition with the observation as extracted below;

“In the available facts and circumstances, it is seen that the D.Hr has alleged to have offered Rs.8000/- to the Jdr in the village in presence of Bhadralkas who refused to accept the same but the said contention of the D.Hr is flatly denied by

the Jdr. Moreover, the D.Hr has not taken any interest in proceeding with the matter, if at all, the Jdr refused to receive the amount offered by the D.Hr on or before 20-3-07 and couldn't execute the sale deed by 31-3-07, then according to the order of the learned Appellate Court, the executing court feels handicapped to act according to equity and natural justice in view of the clarity and direction in the order. Having considered the matter, I am of the view that the D.Hr, who has filed the present Execution Case has lost his right to repurchase the suit land in view of the order of the learned Appellate Court. Accordingly the execution case is dismissed on contest without any cost."

5. The observation made by the learned Executing Court is ex-facie erroneous and factually not sustainable, inasmuch as without conducting any enquiry as to whether or not there was offer of consideration money by the decree-holder within the stipulated time, a finding was recorded that the decree-holder lost the right to purchase the property. The decree-holder vide his execution petition supported by affidavit has made a specific assertion that though he

offered the money within the time, the Judgment debtor refused to accept the same on the plea that he had spent a big amount, i.e., seventy thousand rupees in litigation. The decree holder relied on a resolution of the village gentries in support of his such claim. In that view of his assertion, the learned Court below ought not to have arrived at a conclusion that the decree holder lost his right, on the mere plea of denial taken by the judgment debtor, since the offer of consideration money was a question of fact, on enquiry ought to have been conducted by the Executing Court before arriving at a conclusion. For the manifest illegality, the impugned order is liable to be set-aside.

6. Hence, this C.R.P. is hereby allowed. The impugned order is set-aside and the Execution proceeding stands restored to file. The learned Executing Court shall proceed with the matter in the light of the observation made hereinbefore and conclude the proceeding within six months hence, if there arises no legal impediment.

Urgent certified copy of this order be granted on proper application.

(S.Pujahari)
Judge

MRS

