

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) NO. 1136 OF 2022

Chittaranjan Das **Petitioner**
Mr. Krushna Chandra Mohanty, Advocate
-versus-
Sachidananda Khuntia and another **Opp. Parties**

CORAM:
JUSTICE K.R. MOHAPATRA

ORDER
12.12.2022

Order No.

2.
 1. This matter is taken up through hybrid mode.
 2. The Petitioner in this CMP seeks to assail the order dated 20th October, 2022 (Annexure-5) passed by learned Civil Judge (Junior Division), Baripada in Execution Case No.09 of 1982 (arising out of Title Suit No.02 of 1977) dismissing an application filed by the Petitioner under Order XXI Rule 29 C.P.C. for stay of further proceeding of the execution case.
 3. Mr. Mohanty, learned counsel for the Petitioner submits that after the death of J.Dr. No.1, his legal heir, namely, the present Petitioner along with Mr. Manoranjan Das were brought on record in the execution proceeding. But, no summons were issued to them in the execution proceeding. Thus, they could not know about the development in the execution proceeding. It further appears that although the civil court commissioner had brought the same to the notice of learned Executing Court, which is apparent from the order dated 29th March, 2019 and

learned Executing Court accepted the consolidated copy of the execution petition incorporating legal heirs of J.Dr. No.1 as parties to the execution proceeding, but instead of issuing summons to them, learned Executing Court has issued writ for execution of the decree afresh. Hence, the Petitioner filed an application for stay of the execution proceeding and to provide them an opportunity of hearing. Initially the Executing Court although granted stay of the execution proceeding but subsequently vacated the same and proceeded with the execution proceeding. Hence, an application was filed to recall the order dated 29th March, 2019 and to stay of the execution proceeding, which were rejected.

4. Mr. Mohanty, learned counsel for the Petitioner submits that unless the execution proceeding is stayed, the Petitioner will be highly prejudiced.

5. Taking into consideration the submission made by learned counsel for the Petitioner, it is apparent that the Petitioner along with other legal heir of J.Dr. No.1 have already been impleaded as parties to the execution proceeding. Thus, they can participate in the execution proceeding. Only because the Petitioner has his residential house over the suit land, that cannot be a ground to stay the execution proceeding.

6. In that view of the matter, this Court without interfering with the impugned order under Annexure-5 series directs the learned Executing Court to proceed with the execution case in accordance with law giving opportunity of hearing to the parties concerned.

7. With the aforesaid observation and direction, the CMP is disposed of.

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

(K.R. Mohapatra)
Judge

bks

