

IN THE HIGH COURT OF ORISSA AT CUTTACK
CMP NO. 39 OF 2022

Narendra Kumar Sahoo *Petitioner*
Mr. S.S.K. Nayak, Advocate
-versus-
Gajendra Kumar Sahoo *Opp. Party*
Mr. Karunakar Gaya, Advocate

CORAM:
JUSTICE K.R. MOHAPATRA

ORDER
08.07.2022

Order No.

3. 1. This matter is taken up through hybrid mode.
2. Though this matter is listed for orders, on consent of learned counsel for the parties, it is taken up for final disposal.
3. The Petitioner in this CMP seeks to assail the order dated 1st October, 2021 (Annexure-5) passed by learned District Judge, Jagatsinghpur in F.A.O. No. 24 of 2021, whereby he conforming the order of *status quo* dated 4th August, 2021 (Annexure-4) passed by learned Civil Judge (Junior Division), Tirtol in I.A. No. 23 of 2021 (arising out of C.S. No. 29 of 2021), vacated the same in respect of Schedule 'B' property.
4. Mr. Nayak, learned counsel for the Petitioner submits that the suit has been filed for recovery of possession and permanent injunction. Along with the plaint, the Petitioner filed an application under Order XXXIX Rules 1 and 2 C.P.C. in I.A. No. 23 of 2021 with a prayer to restrain the Defendant-Opposite Party from making any further construction encroaching upon Schedule 'A' land by blocking the common passage of the Plaintiff and from changing the nature and character of the Schedule 'A' land in any

manner till disposal of the suit. The Schedule 'B' land as described in the Schedule of the I.A., is a part of Schedule 'A' land. It is his submission that when the Defendant-Opposite Party started construction over 'A' Schedule land, a petition was filed. But, subsequent to undertaking construction over 'A' Schedule land, the Defendant-Opposite Party raised construction over 'B' Schedule land for which the Petitioner made a bifurcation of the Schedule 'A' land in the schedule of the I.A. If the Petitioner makes construction over 'B' Schedule land, passage of the Petitioner will be completely blocked.

5. Considering the rival contention of the parties, learned trial Court directed both the parties to maintain *status quo* over Schedule 'A' land, which includes Schedule 'B' land, till final disposal of the suit. Assailing the same, the Defendant-Opposite Party preferred an appeal in F.A.O. 24 of 2021. Learned District Judge, Jagatsinghpur without considering the matter in its proper perspective although confirmed the order of *status quo* in respect of Schedule 'A' land, but vacated the interim order of *status quo* in respect of Schedule 'B' land for which this CMP has been filed.

6. Mr. Gaya, learned counsel for the Opposite Party vehemently objected to the same and referring to paragraph-5 of the CMP submitted that the passage as alleged by the Petitioner is under Schedule 'A' land. Thus, learned appellate Court has committed no error in vacating interim order of *status quo* in respect of Schedule 'B' land. He further submits that the Petitioner has already constructed his house over his property, but is creating unnecessary obstruction when the Opposite Party is making

construction over his land. He, therefore, prays for dismissal of CMP.

7. Taking into consideration the rival contentions of the parties and on perusal of the record, it appears that Schedule 'B' land is a part of Schedule 'A' land. The Petitioner has also categorically stated in the petition that the passage is existing over Schedule 'A' land. Learned trial Court taking into consideration that the Petitioner has already constructed his house up to roof level over Schedule 'A' land directed the parties to maintain *status quo* over the same, which includes Schedule 'B' land. It is also observed by learned trial Court that portico is being constructed over Schedule 'B' land, which is at the plinth level.

8. Mr. Nayak, learned counsel for the Petitioner submits that the Opposite Party by way of construction has already obstructed the substantial portion of the passage of the Petitioner. If construction is allowed to be made over Schedule 'B' land, then the passage of the Petitioner will be completely obstructed. It is, however, stoutly denied by learned counsel for the Opposite Party submitting that since the Petitioner himself has stated that the passage is existing over Schedule 'A' land, there is no necessity to continue the order of *status quo* over Schedule 'B' land.

9. On perusal of the record, it appears that this Court while issuing notice in the matter vide order dated 7th February, 2022 directed that *status quo* as on that date in respect of the disputed land mentioned in the Schedule of the I.A. shall be maintained till the next date of listing. The said interim order is continuing till date. As submitted by learned counsel for the parties, the suit is at the stage of hearing. No petition for variation/vacation of interim

order is filed by the Opposite Party in this CMP. Mr. Nayak, learned counsel for the Petitioner submits that Schedule-B property is meant for common use, which is a part of the Schedule-A land, as mentioned in the interim application filed before learned trial Court. If the interim order so granted by this Court is vacated at this stage, the Petitioner will certainly be prejudiced.

10. In the facts and circumstances of the case narrated above, this Court is of the considered view that interest of justice will be best served, if the parties are directed to maintain *status quo* over Schedule 'A' land of I.A. No. 23 of 2021 (which includes Schedule 'B' land) filed before learned trial court under Order XXXIX Rules 1 and 2 C.P.C. till disposal of the suit and the suit is disposed of at an early date.

11. The CMP is, accordingly, disposed of with an observation that the parties to the suit shall maintain *status quo* in respect of Schedule 'A' land of I.A. No. 23 of 2021 (which includes Schedule 'B' land) filed before learned trial court under Order XXXIX Rules 1 and 2 C.P.C. till disposal of the suit. Learned trial Court shall make an endeavour to dispose of the suit at an early date without granting unnecessary adjournments. Parties are directed to cooperate with learned trial Court for early disposal of the suit.

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

(K.R. Mohapatra)
Judge

bks