

IN THE HIGH COURT OF ORISSA AT CUTTACK

CMP No.85 Of 2022
(Through video conferencing mode)

JBS Construction Pvt. Ltd.

....

Petitioner

Mr. S. Pattanaik, Advocate

-versus-

Dillip Kumar Nayak

....

Opposite Party

Mr. S. Rath,
Advocate

CORAM: JUSTICE ARINDAM SINHA

Order
No.

ORDER
03.02.2022

1. Mr. Pattnaik, learned advocate appears on behalf of petitioner. He submits, his client, plaintiff in the suit, seeks interference with order dated 28th January, 2022 of the first appellate Court, setting aside contested order of injunction passed by the trial Court. He draws attention to agreement of sale dated 16th December, 2020 between opposite party defendant and his client. He demonstrates that opposite party had represented to obtain power from the co-sharers, to deal with the entire land at aggregate consideration of Rs.6,62,00,000/-. Rs.60,00,000/- was paid by his client to opposite party, who thereafter sought to resile and not fulfill his obligations under the agreement. His client sued for permanent injunction restraining opposite party from alienating any part of the land being subject matter of the agreement. At the time of agreement, the land was under kisam 'chaka'.

2. He submits, the first appellate Court vacated the interim order on the ground that agricultural land cannot be fragmented and therefore injunction is not necessary. However, in the meantime the kisam, in respect of the agreement land, has been converted to 'gharabari'. This fact could not be brought to notice of the first appellate Court.

3. Mr. Rath, learned advocate appears on behalf of opposite party plaintiff. He submits, there is material suppression by petitioner in seeking interference with impugned order. It is a good order. Agricultural land cannot be fragmented and therefore there is no ground for interference.

4. In impugned order first appellate Court said, inter alia, as follows.

"The suit land is an extent of area measuring Ac.0.810 decimals out of Ac.1.620 decimals of suit plot No.30. On a glance to the record of right, it seems, there is only one plot in the concerned khata i.e. plot No.30. It appears, the suit plot is chaka land. The agreements to sell executed by the appellant in two different dates as aforesaid, relied upon by the respondent, were with a promise to sell the suit land out of the suit plot in receiving earnest amount. In the aforesaid scenario, it is apt to have humble reference to the provision of Section 34 of OCH and PFL Act which envisages no agricultural land in a locality shall be transferred or partitioned so as to create a fragment. However, sub-section 2 and 3 of Section 34 of OCH and PFL Act provides

exception. The present case appears to have not covered under the exception provided under sub-section 2 and 3 of Section 34 of the Act. However, the issue if the proposed transfer hits U/s 34 of OCH & PFL Act or the proposed sale if made pursuant to agreement, will create a fragment of the chaka land, so also, the fate of the sale deeds dated 29.04.2021 and 20.07.2021 in prospective of aforestated prohibition of law, are the subject matter of adjudication in the suit upon culmination of trial. But then, it prima facie appears, if the suit land i.e. Ac.0.810 decimals out of suit plot is transferred, it will create a fragment of chaka land. Section 35 of OCH & PFL Act speaks a transfer or partition in contravention of provision of Section 34 shall be void.

08. It is the settled principle of law, an agreement for sale of immovable property does not, of itself create any interest in or charge on such property. A person having an agreement for sale in his favour does not get any right in property, except right of obtaining sale deed on that basis. It is not a case of seeking enforcement of contract or specific performance of contract, rather, a sample suit for permanent injunction. The respondent does not claim to direct the appellant to execute a regular sale deed. Partition or transfer of chaka land can only be made within the extent permissible under the provision of Section 34 of OCH & PFL Act. As

already stated, the parties do not have any pleading so as to attract the exception provided in said Section 34. A person either on the basis of title or possession in the circumstances of particular case, can maintain a suit for permanent injunction and not otherwise. The respective agreements to sell do not indicate delivery of possession of the suit land to the respondent. However, the sale deeds executed by the appellant in favour of the respondent in respect of the part of the suit land indicate delivery of possession. Since one of the co-owners did not authorize the appellant to deal with his interest over the suit plot and the fate of the sale deeds subject to provision of Section 34 of the OCH & PFL Act, pending adjudication of the issue if the possession of the respondent in respect of part of the suit land is lawful, it would have been said that the respondent has a prima facie case, had the sale of chaka land been not prohibited for alienation on account of creation of fragment. In visualizing another angle also, chance of creation of fragment of chaka cannot be ruled out as interest of Prafulla or his heirs is not covered in either of power of attorney or agreements to sell. In that view of the matter, there could not have any direction in the impugned order to the extent of putting up a condition for payment of balance consideration amount since the suit is not for specific performance of contract. Similarly, putting up of condition of consent of the respondent

at the time of transferring any extent of the suit land in the impugned order, does not stand to reason when otherwise, alienation of chaka land is prohibited if it creates a fragment.

In the wake of above discussion, this Court is of the considered view that the respondent has no prima facie case.”

5. It is clear the first appellate Court appreciated scope of the suit as not for specific performance but for permanent injunction. It proceeded on the basis that clear title or possession can make out prima facie case for issuance of order of interim injunction. This, petitioner as respondent in the appeal, could not establish.

6. In case urged subsequent event of change in category of the land is to be relied upon by petitioner, it may apply for review of impugned order, if permissible in law.

7. The writ petition is disposed of.

(Arindam Sinha)
Judge

Sks