

A.F.R

ORISSA HIGH COURT : C U T T A C K

C.M.P. No.142 of 2022

*An application under Article 227 of
the Constitution of India, 1950*

Malati Sahu & Ors.

: Petitioners

-Versus-

Gourimani Sahu & Anr.

: Opposite Parties

For Petitioner

: M/s. S.K. Mishra,
J. Pradhan,
P. Mohanty,
S. Mohanty, S. Sethi

For Opposite Party No.2

: M/s. K.K. Rath,
P. Panda

JUDGMENT

CORAM :

JUSTICE BISWANATH RATH

Date of hearing & judgment :: 08.03.2022

1. Looking to the cause title involved herein, the nature of dispute and finding the inconvenience caused to the defendant for the impugned order herein and as the contesting Opposite Parties have already appeared, this Court on consent of both the parties, takes up this matter for final hearing without even issuing notice to the Plaintiffs.

2. This Civil Miscellaneous Petition involves a challenge to the impugned order dated 23.12.2021 passed by the learned 3rd Addl. Civil Judge (Sr. Divn.), Balasore in C.S. No.131 of 2012 thereby allowing the petition filed by the 3rd party purchaser U/o.1 Rule 10 read with Order 22, Rule 10 of C.P.C. for joining as a co-plaintiff.

3. Challenging the impugned order Mr. Mishra, learned counsel for Petitioners taking this Court to the plea taken in the above application at pages 27 & 28 of the brief a portion of Annexure-3 brought to the notice of this Court that the 3rd party petitioner in moving such application has given a cause of action involving the registered sale deed at the instance of the Plaintiff; not only sold during pendency of the suit vide C.S. No.131 of 2012(I) on 29.10.2019 but also showed valuation involving Rs.18,97,506/- in such transaction. Through page 28 of the brief, it is urged that there is also specific plea of the 3rd party that the 3rd party came to know about pendency of the suit only on 09.10.2020 and thereafter came up in filing such application. It is, in the above background of the matter Mr. Mishra, learned counsel for the Petitioners defending the case of the Petitioners contended that even assuming that the 3rd party is a *lis pendens* purchaser, he is either to suffer for the loss of the plaintiff or to succeed on the success of the plaintiff and for the settled position of law, neither there is requirement of hearing of such parties, nor there is also necessity of bringing in such party as ultimately the *lis pendens* purchaser steps into the shoe of the plaintiff i.e. his vendor.

In the above premises, it is submitted that the impugned order being illegal one, Mr. Mishra, learned counsel for Petitioner requested this Court for interfering in the impugned order and setting aside the same.

4. Mr. Rath, learned counsel for the contesting Opposite Party in his counter submission while not disputing that the cause of action for

bringing such application arises on 27.09.2020 and information regarding pendency of such litigation came on 9.10.2020, further also not disputing that there has been development of part sale of the scheduled property by way of sale deed bearing R.S.D No.10061907526 dated 29.10.2019 undisputedly taking place during the pendency of the suit, however contended that since he has a stake in the meantime for entering into a sale deed involving a property being sold by the plaintiff in spite of pendency of the suit, his right is ultimately required to be protected in the final outcome in the suit, Mr. Rath, learned counsel for the Opposite Party thus attempted to defend the impugned order and prays for dismissal of the Civil Miscellaneous Petition.

5. Considering the rival contentions of the parties, this Court finds, the suit bearing C.S. No.131/2012-(I) on the file of the learned 3rd Addl. Sr. Civil Judge, Balasore contains the following relief and schedule:

“a) The right, title and interest of the suit land be declared in favour of the plaintiff.

b) The defendants be evicted from the suit land and the possession thereof be delivered to the plaintiff.

c) The mesne profit accruing from the date of filing of this suit till it's disposal, be awarded to the plaintiff against the defendants.

d) The cost of the suit be awarded in favour of the plaintiff.

e) Any other relief as the Court deem fit .

‘Schedule ‘A’ (Genealogy of Plaintiff)’

Prayag Sahu

Nahabat Sahu

Laxman Sahu

Madhusudan Sahu

O(Died issueless)

Radhamani Sahu (Wife)

Gourimani Sahu (Plaintiff) daughter

Schedule 'B' (Genealogy of plaintiff and deftds)

Gourimani Sahu		
<u>Gopal Ch. Sahu (Husband)</u>		
Gourmohan Sahu	Malati Sahu (D.1)	Rebati Sahu
(Son)	/Punilala Sahu	/Nandalal Sahu
	(Def.2) Husband)	/ (Husband) Def.7
	//	Rajesh Sahu
	//	(Son, Def. 8)
	//	Tulsi Sahu
		(daughter)

Kamalkishore Sahu	Manoj Sahu	Biswajeet Sahu	Rohit Sahu
(Def.3)	(D.4)	(D.5)	(D.6)

Schedule – C

District-Balasore, P.S. Balasore Town Unit no.11 Mouza Jampur, Khata no.470, plot no.1122 A0.009 decs. Out of A0.025, Corresponding to C.S. khata no.7 plot no.168 A0.02 decs. Plot no.1123 A0.007 decs. Out of A0.020 corresponding to C.S. khata no.105 plot no.169 A0.02 decs., (total A0.016 decs. Out of A0.045.

Schedule – D

Sketch map

Schedule – E

Dist. Balaore, P.S. Balsore Town, Unit no.11 Mouza-Jampur, Khata no.470 plot no.1122 A0.025 corresponding to C.S. khata no.7, plot no.168 A0.020 plot no.1123 A0.020, corresponding to C.S. khata no.105 plot no.169, total A0.045 decs.”-

6. It is while the suit has reached the stage of closure of evidence of the Plaintiff and there is already commencement of evidence of the defendant, the petition U/o.1 Rule 10 read with Order 22, Rule 10 of C.P.C. was brought by the 3rd party purchaser with the following prayer and schedule of property:-

“Hence prayed that this 3rd party petitioner be impleaded as co-Plaintiff/ party in the above suit and obliged.

SCHEDULE LAND

Dist.- Balasore, Mouza:- Jampur, Unit No.-11
Khata No.-470, Plot No.-1122, Ac.0.015 decs.,
Plot no.-1123 Ac.0.010 decs.

7. For bringing such application this Court here reading through the application again finds, the cause of action involving such application runs through unnumbered paragraph nos.1 & 2, which reads as follows :

“That, the Plaintiff has got right, title, interest over the schedule land which is recorded in her name. The Plaintiff sold the schedule land to this 3rd Party – Petitioner by R.S.D. No.-10061907526 dated 29.10.2019 for a consideration of Rs.18,97,506/- and delivered possession in favour of this 3rd Party. By virtue of the aforesaid sale deed this 3rd party became the full & absolute owner of the schedule property as such this 3rd party has got right, title, interest over the schedule land.

On 27.09.2020 the Malati Sahu, Biswajit Sahu, Rohit Kumar Sahu, Kamal Kumar Sahu & Raj Kumar Sahu came to spot and created disturbance and caused damage to the schedule property & house standing there on and further threatened the Plaintiff and assaulted her and threatened to kill her. On protest by the 3rd Party they disclosed that as C.S. No.-131/2012 is pending in the Civil Court for the schedule property. They will do whatever they like.”

8. In comparison of the schedule of property in suit as well as in the petition involved, this Court finds, undisputedly the application U/o.1 Rule 10 read with Order 22, Rule 10 of C.P.C. involves the property borne in schedule ‘C’ of the plaint and reading the same together with the unnumbered paragraph nos.1 & 2 as indicated hereinabove, this Court finds, the cause of action giving rise for filing such application remains to be coming into existence in R.S.D. No.10061907526 dated 29.10.2019 at the instance of the plaintiff and the 3rd party purchaser the contesting opposite party herein and further also involving the cause of action taken place on 27.09.2020 and 9.10.2020.

9. Considering the nature of the suit and the interest of 3rd party involved therein through the petition U/o.1 Rule 10 read with Order 22, Rule 10 of C.P.C. this Court finds, in the event the plaintiff succeeds in

the suit, there need not be any suffering on the part of the 3rd party purchaser i.e. the contesting opposite party herein and further this Court considering the nature of suit involved also observes, if the plaintiff loses in the suit, 3rd party right created in the pendency of the suit is also to be covered by the ultimate outcome in the pending suit and there is no escape otherwise. Here this Court also observes, in the event of any suffering of the 3rd party on the ultimate outcome of the suit, the 3rd party may have to see adjudication required involving some right created in his favour by the Plaintiff in the pendency of the suit and there may be a litigation in between the plaintiff and the 3rd party and there is no necessity of involving the present defendant and further looking to the pleadings in the plaint averments and also taking into account the plea of the 3rd party intervenor, this Court finds, the contingency requiring filing of such application has no place to be considered in the trial of the suit already existed. This Court here finds, the 3rd party attempt might be a case to make the suit completed in order to drag the litigation which has no room in the eye of law. It is, in the circumstance, this Court finds, there has been mechanical consideration of such application by the trial court and such order cannot be sustainable. For the observation of this Court made hereinabove, this Court interfering in the impugned order at Annexure-5 dated 23.12.2021 sets aside the same.

10. The Civil Miscellaneous Petition succeeds. In the circumstance there is no order as to cost.

(.....)
Biswanath Rath
Judge

Orissa High Court, Cuttack.
 The 8th day of March, 2022//
Ayaskanta Jena,
Senior Stenographer