

IN THE HIGH COURT OF ORISSA AT CUTTACK

C.M.P. No.149 of 2022

Chandana Mishra & Ors.

....

Petitioners

Miss S. Mishra,
Mr. P.K. Mishra,
Advocates

-versus-

Basudev Rath

....

Opposite Parties

**CORAM:
JUSTICE BISWANATH RATH**

**ORDER
13.04.2022**

Order No.

04. 1. In spite of resistance by Miss Mishra, learned counsel for the Petitioners to the impugned order at Annexure-8, taking resort to a decision of the Hon'ble apex Court in the case of *Anathula Sudhakar Versus P.Buchi Reddy (Dead) by Lrs. and Others* as reported in (2008) 4 SCC 594 to keep the property intact to ultimately achieve the benefit of judgment and decree involving the nature of the suit involved herein this Court finds, since the Petitioners are agreeable not to alienate rest of the disputed property i.e. 9 decimals and also agreeable not to claim any equity in respect of the construction undertaken already, in the event they ultimately lose in the suit, the matter can be disposed of with interference in the impugned order to the above extent only. This Court, therefore, in modification of the part of the order restraining the defendants from making construction over the scheduled 'B' property till disposal of

the case, modified the same to the extent that the defendant Nos.2 to 5 may go ahead with completion of the construction, but there shall neither be transfer of such property to any 3rd party nor shall there be any claim for equity involving any expenditure made in the process by the defendants. This order will come into operation provided the defendant nos.2 to 5 i.e. the petitioners herein file an affidavit by way of undertaking that they will not claim any equity and vacate the disputed premises in the event they ultimately lose in the suit, within a period of seven working days hence before the trial court. In the meantime since there is some obstruction in disposal of the suit involved herein for the pendency of the first appeal vide F.A. No.264 of 1982 now on the file of the learned District Judge, Nayagarh, the learned District Judge, Nayagarh is requested to see completion of such appeal vide F.A. No.264 of 1982 within a period of six months.

2. The C.M.P. stands disposed of with the above direction.

(Biswanath Rath)
Judge