

IN THE HIGH COURT OF ORISSA AT CUTTACK

CMP NO. 246 OF 2020

Subasini Patra

....

Petitioner

Mr. Amit Prasad Bose, Advocate

-versus-

Surabhi Kumari Devi

....

Opp. Party

CORAM:

JUSTICE K.R. MOHAPATRA

ORDER

14.09.2022

Order No.

CMP NO. 246 OF 2020

& I.A. No. 803 of 2022

- 4.
1. This matter is taken up through hybrid mode.
 2. Although I.A. No.803 of 2022 is listed for extension of interim order dated 1st July, 2020, the CMP is taken up for final disposal on consent of learned counsel for the Petitioner.
 3. Perused the order dated 25th June, 2021, wherein this Court taking exception to the steps taken by learned 2nd Additional Senior Civil Judge, Berhampur in proceeding with the suit in spite of interim order passed by this Court on 1st July, 2020 in I.A. No. 261 of 2020, sought for explanation from learned Presiding Officer.
 4. On perusal of order dated 31st March, 2021 passed by learned 2nd Additional Senior Civil Judge, Berhampur (annexed to the I.A. No.803 of 2022 filed by the Petitioner for extension of interim order), it appears that learned trial Court in obedience to the order passed in *Asian Resurfacing of Road Agency Private Limited and another –v- Central Bureau of Investigation*, reported in (2018) 16 SCC 299 and communicated to the Court by

Memo No.499(21) dated 1st March, 2019 by the Secretary, DLSA, Ganjam, Berhampur, proceeded with the suit as six months had already elapsed from the date of the interim order dated 1st July, 2020 and no extension of the said interim order was made in the meantime. However, explanation as directed by this Court in order dated 25th June, 2021 has already been asked for by the Registry.

5. The Petitioner in this CMP seeks to assail the order dated 15th February, 2020 (Annexure-1) passed by learned 2nd Additional Senior Civil Judge, Berhampur in C.S. No.148 of 2012, whereby he rejected an application filed by the Petitioner to call for the original records of Mutation Case No. 89 of 1987 from the Tahasildar, Berhampur.

6. Mr. Bose, learned counsel for the Petitioner submits that C.S. No. 148 of 2012 has been filed for declaration and consequential relief. The Plaintiff-Opposite Party claims her title on the basis of a sale deed. The vendor of Plaintiff-Opposite Party had filed Mutation Case No. 89 of 1987 to mutate the land in her name on the basis of said sale deed, which was rejected. As such, the Plaintiff has no title over the suit land. In order to establish the same, the Defendant-Petitioner had obtained the certified copy of the order passed in Mutation Case No. 89 of 1987 from the Tahasildar, Berhampur, but unfortunately the same was lost. However, the Petitioner has kept the photo copy of the said order passed in the mutation case. He, however, filed another application before the Tahasildar, Berhampur to obtain the certified copy of the case record in Mutation Case No.89 of 1987, but the same was rejected on 23rd February, 2019 on the ground

that the case record is not available in the record section. In that view of the matter, during continuance of recording of the evidence on behalf of Defendant, she filed an application to call for the records in Mutation Case No. 89 of 1987 from the office of Tahasildar, Berhampur. Said application was rejected on the ground that the Petitioner could not file any document to show that the application made by the Defendant to obtain the certified copy was rejected.

7. Mr. Bose, learned counsel for the Petitioner further submits that the ground of dismissal of the application to call for the records in Mutation Case No.89 of 1987 is not sustainable in the eyes of law. Since the case record in Mutation Case No.89 of 1987 is essential for just adjudication of the suit, learned 2nd Additional Senior Civil Judge, Berhampur ought to have allowed the application as the Petitioner is not in a position to file certified copy of the same. He, therefore, prays for setting aside the impugned order under Annexure-1.

8. Although the Opposite Party is represented by learned counsel, but none appears at the time of hearing.

9. Taking into consideration the submission made by learned counsel for the Petitioner and on perusal of the record, it appears that the Petitioner had made an application to obtain the original case record in Mutation Case No. 89 of 1987, but the said copy application was rejected by the Additional Tahasildar, Berhampur on 20th March, 2019 on the ground that the case record is not available in the record section. In view of the above, no fruitful purpose will be served by directing the Tahasildar, Berhampur to produce the case record in Mutation Case No. 89 of 1987. The

Petitioner, if so advised, may move learned trial Court to lead secondary evidence in support of her case, if foundation for the same is available on record. Accordingly, this Court is not inclined to interfere with the impugned order under Annexure-1. Hence, the CMP being devoid of any merit stands dismissed. Consequently, the I.A. is disposed of.

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

(K.R. Mohapatra)
Judge

bks

