

IN THE HIGH COURT OF ORISSA AT CUTTACK

CMP No. 361 OF 2014

Devraj Kanungo and another ***Petitioners***
Mr. Swarup Kumar Patnaik, Advocate

-versus-

Sakuntala Agarwal and another ***Opp. Parties***
Mr. Tusar Kumar Mishra, Advocate
(For Opp. Party No.2)

CORAM:
JUSTICE K.R. MOHAPATRA

ORDER
14.12.2022

Order No.

5. 1. This matter is taken up through hybrid mode.
2. The Petitioners in this CMP seek to assail the order dated 2nd September, 2013 (Annexure-22) passed by learned Senior Civil Judge, 1st Court, Cuttack in C.M.A No.494 of 2013 (arising out of C.S. No.572 of 2012), whereby an application filed under Section 151 C.P.C. has been rejected.
3. Mr. Patnaik, learned counsel submits that in C.S. No.572 of 2012, the Petitioners were the Defendants. But without their knowledge and by practicing fraud on the Court, the decree in C.S. No.572 of 2012 was obtained. Hence, an application under Section 151 C.P.C. was filed to set aside the decree, as it was obtained by practicing fraud. It is his submission that assailing the binding effect of the decree passed in C.S. No.572 of 2012, the Petitioners have also filed C.S. No.521 of 2013, which is at present pending before learned 4th Additional Senior Civil Judge, Cuttack. It is also his submission that although a suit to declare the decree passed in C.S. No.572 of 2012 to be null and void has

been filed, but that does not preclude the Petitioners to maintain an application under Section 151 C.P.C., as the law is to approach the Court to get the decree set aside in which the fraud was committed. The Petitioners in the petition under Section 151 C.P.C. have also prayed for initiating a proceeding under Section 340 Cr.P.C. against the Opposite Parties for committing fraud on Court. He further submits that the Opposite Party No.1 has died in the meantime, but he has been substituted in the C.S. No.521 of 2013. Learned trial Court erroneously holding that a petition under Section 151 C.P.C. is maintainable only against a compromise decree and the present suit having disposed of on contest, rejected the petition. Hence, he prays for setting aside the impugned order under Annexure-22 and to remit the matter back to learned trial Court for fresh adjudication of the CMA No.494 of 2013.

4. Mr. Mishra, learned counsel appearing for the Opposite Party No.2 submits that the petition under Section 151 C.P.C. is not maintainable in view of the fact that the suit was disposed of on contest. Further the Petitioners have also filed C.S. No.521 of 2013 to declare the decree passed in C.S. No.572 of 2012 to be null and void being obtained by practicing fraud. Hence, learned trial Court has committed no error in rejecting the application under Section 151 C.P.C.

5. Considering the rival contentions of the parties and on perusal of the record, it is evident that C.S. No.572 of 2012 was disposed of on contest. However, subsequent to the judgment and decree being passed, the Petitioners, who were Defendants in the said suit filed an application under Section 151 C.P.C. to

get the decree set aside on the ground that the same was obtained by practicing fraud. Learned trial Court on consideration of the submissions and materials on record came to hold that a petition under Section 151 C.P.C. will only be maintainable in the same Court when a decree is passed on compromise in view of the proviso to Order XXIII Rule 3 C.P.C. After disposal of the suit on contest, no such petition is maintainable. In the instant case, the Petitioners have already filed C.S. No.521 of 2013 to declare the decree passed in C.S. No.572 of 2012 to be null and void with other consequential relief. The Petitioners, if so advised, may also make a prayer in the said suit to initiate a proceeding under Section 340 Cr.P.C., if occasion so arises. In that view of the matter, learned trial Court has committed no error in dismissing C.M.A No.494 of 2013 filed under Section 151 C.P.C.

6. With the aforesaid observation, the CMP is accordingly disposed of.

7. Keeping in mind the age of C.S. No.521 of 2013, this Court directs learned trial Court for early disposal of the suit in accordance with law, if there is no legal impediment.

8. Interim order dated 9th May, 2014 passed in Misc. Case No.322 of 2014 stands vacated.

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

(K.R. Mohapatra)
Judge