

IN THE HIGH COURT OF ORISSA AT CUTTACK

CMP No. 436 OF 2022

Sukamani Naik

....

Petitioner

Miss Deepali Mahapatra, Advocate

-versus-

Sudeshna Bhoi and others

....

Opp. Parties

CORAM:

JUSTICE K.R. MOHAPATRA

ORDER

Order No.

26.08.2022

4. 1. This matter is taken up through hybrid mode.
2. Although service of notice on Opposite Party Nos.1 to 3 is sufficient, none appears on their behalf at the time of call.
3. This CMP has been filed assailing the order dated 8th November, 2021 (Annexure-8) passed by learned District Judge, Sambalpur in F.A.O. No.5 of 2020, whereby he dismissed the appeal and confirmed the order dated 9th January, 2020 passed by learned Senior Civil Judge, Sambalpur in I.A. No.25 of 2019 (arising out of C.S. No.126 of 2012) restraining the Petitioner from alienating the suit land in favour of any other person till disposal of the suit.
4. Miss Mahapatra, learned counsel submits that Defendant No.7 is the Petitioner in this CMP. The suit has been filed by the Opposite Parties for specific performance of contract executed between Lal Babu Bhoi and the Defendant Nos.1 to 6 by virtue of a Registered Sale Deed in favour of the Petitioner (Defendant No.7) on 21st November, 2012 and delivered possession to her. On the basis of the Registered Sale Deed, the Petitioner got the land mutated in her name and separate Khata No.248/852 was created. After mutation of the land in her

name, the Petitioner converted the suit property to *Gharabari* kissam. Due to her legal necessity, she alienated a portion of the suit property. At this juncture, on a petition filed by the Plaintiff, she (Petitioner) was impleaded as Defendant No.7 in the suit and an application in I.A. No.25 of 2019 was filed under Order XXXIX Rules 1 and 2 C.P.C. to restrain the present Petitioner from alienating the suit property. Learned trial Court without considering the fact that the Petitioner is the true owner of the land in question, allowed the said application vide order dated 9th January, 2020 restraining the present Petitioner from alienating the suit property during pendency of the suit. Being aggrieved, the Petitioner preferred F.A.O. No.5 of 2020. Learned appellate Court without considering the fact that the Petitioner is the true owner in possession over the suit land and no relief for injunction can be granted against her, dismissed the appeal. Hence, this CMP has been filed.

5. Taking into consideration the submission made by Miss Mahapatra, learned counsel for the Petitioner and on perusal of the record, it appears that the Petitioner purchased the property during pendency of the suit. But she was subsequently impleaded as Defendant No.7. It is also not disputed that the land in question has been mutated in her name and she has already converted the same to *Gharabari*. Before being impleaded as a party to the suit, she had alienated a portion of the property to different person to meet her legal necessity.

6. In course of hearing, Miss Mahapatra, learned counsel for the Petitioner relied upon the decision in the case of ***Sasmita Nayak –v- Dinesh Chandra Pattanaik (Dead), represented by***

substituted legal heirs, Sri Amita Pattnaik and two others,
reported in 2017 (II) OLR 412, wherein this Court has held as
under:

“9. Admittedly, the defendants are owners of the suit land. They would put to more hardship and/or inconvenience in comparison to the plaintiff, if an order of injunction is granted in favour of the plaintiff, as the defendants would be prevented from dealing with their property independently. Further, any alienation of the suit land, that may take place during pendency of the suit, would be governed under the principles of lis pendens.”

7. The case law cited also arose from a suit for specific performance of contract. A true owner should not be restrained from dealing with his/her property independently, if circumstance does not warrant so. In the instant case, there is ample material on record to show that the Defendant No.7 having purchased the land from the Defendant Nos.1 to 6 has mutated the property in her name. As such, she appears to be in possession of the suit property also. These material aspects were not taken into consideration by learned trial Court while adjudicating the appeal. In view of the above, the matter requires re-consideration by learned District Judge, Sambalpur.

8. Accordingly, the impugned order under Annexure-8 is set aside and the matter is remitted back to learned appellate Court for fresh adjudication, giving opportunity of hearing to the parties concerned.

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

(K.R. Mohapatra)
Judge