

IN THE HIGH COURT OF ORISSA AT CUTTACK

CMP No. 1731 of 2015

Purandar Gahir @ Purun Gahir and others* *Petitioners

Mr. Sushanta Kumar Joshi, Advocate

-versus-

Kunjamani Thapa @ Bag and others* *Opp. Parties

**CORAM:
JUSTICE K.R. MOHAPATRA**

**ORDER
06.07.2022**

Order No.

12. 1. This matter is taken up through Hybrid mode.
2. Petitioners in this CMP seek to assail the order dated 21st January, 2015 (Annexure-5) passed in CS No.86/18 of 2005-2013, whereby learned Civil Judge (Senior Division), Kantabanji allowed an application filed by the Plaintiff-Opposite Party No.1 (since dead substituted by Opposite Party No.1(a)) under Order XXVI Rule 9 CPC.
3. Mr. Joshi, learned counsel for the Petitioners submits that the suit has been filed for declaration of right, title and interest in respect of suit schedule property, confirmation of possession and permanent injunction, as well. It is the case of the Plaintiff that his grandfather, namely, Chandra Sekhar Thapa had purchased an area Ac.5.87 decimal out of Sabik Khata No.43 in mouza Kurlubahal from the ancestors of the Defendants vide RSD in the year 1975. During settlement operation in the year, separate ROR bearing Khata No.39 was prepared in the name of his grandfather. The grandfather of the

Plaintiff was all along in possession of the land he purchased. After his death, Plaintiff's father stepped into the shoes and on his death the Plaintiff- Petitioner is in possession of the suit property exercising his right, title and interest thereon. On 26th April, 2005 on demarcation, the Plaintiff came to know that some portion of the land (suit land) purchased by his grandfather has been wrongly recorded in the name of the Defendants in the ROR under Holding No.141 and some of the land not purchased by his grandfather has been wrongly recorded in his name under Holding No.39. In view of the above, the suit has been filed. The suit land as described in the plaint are Plot No.1030 measuring an area Ac.0.44 decimal, suit Plot No.1031 to an extent of Ac.0.16 decimal, suit Plot No.1032 to an extent of Ac.1.90 decimal, suit Plot No.1026/1488 to an extent of Ac.0.40 decimal and Plot No.1027/1489 to an extent of Ac.0.80 decimal out of Ac.1.40 decimal have been wrongly record in the name of the Defendants.

4. Mr. Joshi, learned counsel for the Petitioners submits that the Plaintiff neither filed the original sale deed in support of his case nor produced the sketch map. He further submitted that there is in fact no dispute with regard to identification, area as well as topography of the land. Referring to objection to the petition filed under Order XXVI Rule 9 CPC (Annexure-4) he submits that it has been categorically stated therein that there is no dispute with regard to the identification of the land purchased by the grandfather of the Plaintiff. The land mentioned in Schedule-‘A’ of the plaint was purchased by the grandfather of the Petitioner, namely, Chandra Sekhar Thapa.

Further, the Defendants have admitted that they have got no title or possession over the land mentioned in Schedule-‘C’ of the plaint. In cross-examination, the Plaintiff never disputed such admission of the Defendants. He also referred to the cross-examination of the Plaintiff (PW-1), which reads as under:-

“23. I have knowledge that in this case a counter claim has been filed by Purandir Gahir and others in respect of Ac.02.76 decs of land out of Khata No.39. It is a fact that in my W.S. filed on the counter claim of defendants I have admitted that I have no right, title, interest and possession over that Ac.2.76 decs of land and the same land is exclusively possessed by the counter claimant defendants. It is a fact that in my W.S. I have admitted that the land described in schedule ‘A’ of the counter claim which corresponds to ‘B’ schedule land of the counter claim was the purchased (sic) land of Chandra Sekhar Thapa to which he was possessing from the date of purchase till his death and after his death my mother Kunjamani Thapa being his only daughter was possessing the same and after the death of my mother I being his only successor is possessing the same.”

He, therefore, submits that there is no necessity to depute a Survey knowing Commissioner for identification of the land. The petition was only filed to linger the proceeding and to harass the Defendants. Learned trial Court did not at all take into consideration these material aspects and passed the impugned order. Hence, the impugned order is not sustainable and is liable to be set aside.

5. Although notices were issued to the Opposite Parties and it was duly received by Opposite Party No.1(a), but he preferred not to appear in the CMP.

6. On perusal of record, it appears that both the parties to the suit have filed their sketch maps prepared through their respective private Amins. But, as observed by learned trial Court, on superimposition, those sketch maps did not tally. It

further appears that none of the parties has filed plot index of the suit land which could have thrown some light on identification of the land and area, the parties are claiming. Thus, in order to elucidate the real matter in controversy, learned trial Court felt it necessary to depute a Survey knowing Commissioner to make a spot enquiry and submit his report. When there is inadequate evidence on record led by both the parties and the identification of the land is not clear, learned trial Court is well within its jurisdiction to exercise his power to depute Survey knowing Commissioner to measure the land, which has been done in the instant case, as the report of the Commissioner is imperative in this case for identification of the suit land for proper adjudication of the suit.

6. In view of the discussions made above, I find no infirmity in the impugned order. Thus, the CMP being devoid of any merit stands dismissed. However, learned trial Court shall make an endeavour for early disposal of the suit in accordance with law.

7. Interim order dated 8th January, 2016 passed in Misc. Case No.1793 of 2015 stands vacated.

Issue urgent certified copy of the order on proper application.

(K.R. Mohapatra)
Judge