

IN THE HIGH COURT OF ORISSA AT CUTTACK

CMP No. 437 of 2022

Agadhu Mallik

..... Petitioner

Mr.H.S. Deo, Advocate

-versus-

Krushna Behera and another

.... Opp. Parties

CORAM:

JUSTICE K.R. MOHAPATRA

ORDER

06.07.2022

Order No.

**CMP No. 437 of 2022, CMP No.564 of 2022
& CMP No.565 of 2022**

3. 1. This matter is taken up through Hybrid mode.
2. CMP No.437 of 2022 has been filed assailing order dated 14th December, 2021 (Annexure-5) passed in RFA No.66 of 2017, whereby learned District Judge, Puri rejected an application filed under Order XLI Rule 27 CPC filed by the present Petitioner.
5. It is submitted by learned counsel for the Petitioner that originally the suit land belonged to one Bhobani Behera (the father of Plaintiff-Krushna Behera) and Defendant No.2-Benu Behera (the brother of Bhobani Behera). After the death of Bhobani Behera, his widow and Benu Behera sold the suit land in favour of the present Petitioner by virtue of registered sale deed for a valuable consideration and delivered possession. After purchase, the Petitioner got the land mutated in his name and possessing the same exercising right, title and interest thereon. At this stage, CS No.166 of 2014 was filed by said Krushna Behera, the Plaintiff, for a declaration that the

sale deed executed by the Defendants in favour of the present Petitioner is void and has conferred no right, title or interest on him. Further, prayer was also made to declare the order passed by Additional Tahasildar, Puri in Mutation Case No.923 of 1993 to be void. Prayer for permanent injunction was also sought for. The suit was decreed in favour of the Plaintiff- Opposite Party No.1. Assailing the same, the Petitioner preferred RFA No.66 of 2017, which is pending before learned District Judge, Puri.

5.1 During pendency of the appeal, Opposite Parties managed to create several sale deeds for which the Petitioner was constrained to file three applications, viz., petition under Order XLI Rule 27 to accept the RSD executed by Opposite Parties as additional evidence; petition under Order VI Rule 17 CPC to implead *lis pendens* purchasers as parties to the appeal and also a petition under Order XLI Rule 5 CPC to stay further proceeding in the Execution Case. On consideration, learned District Judge, Puri rejected all these petitions by a common order. Hence, the aforesaid three CMPs are filed.

6. Mr. Deo, learned counsel for the Petitioner submits he does not want to press the prayer for setting aside the order in refusing to stay further proceeding in the execution case, as no execution case has been filed yet. However, *lis pendens* purchasers are proper parties to the appeal for just adjudication of the case. RSD executed during pendency of the appeal should also be accepted as additional evidence. He further submits that the petition filed under Order XLI Rule 27 ought to have been considered at the time of hearing of the appeal as held in the case of ***Malayalam Plantations Limited Vs. State***

of Kerala and another, reported in 2011 (I) CLR (SC) 61, but the learned District Judge, Puri without following due procedure of law and without applying his mind has rejected the petition filed under Order XLI Rule 27 CPC. Hence, these CMPs have been filed. It is his submission that the appeal being a continuation of the suit, proper adjudication can only be made in presence of the *lis pendens* purchasers. He further submits that in order to avoid multiplicity of litigation, the registered sale deeds executed during pendency of the appeal should have been accepted as additional evidence. Learned District Judge, while adjudicating the matter lost sight of the settled position of law and passed the composite impugned order, which is not sustainable in the eyes of law and hence the same is liable to be set aside.

7. On consideration of the submission of learned counsel for the Petitioner and on perusal of record, it appears that the appeal, i.e., RFA No.66 of 2017 is at the stage of argument. Thus, learned appellate Court has committed no error in considering the application under Order XLI Rule 27 C.P.C. at that stage. Further, the alienations made during pendency of the appeal will be governed by the principles laid down under Section 52 of the Transfer of Property Act, 1882. Thus, learned District Judge, Puri in exercise of its discretion refused to implead the *lis pendens* purchasers as parties to the appeal. Moreover, the validity of RSDs executed by Opposite Parties during pendency of the appeal are not in question in the present litigation..

8. In that view of the matter, I find no infirmity in the impugned order either in dismissing the petition under Order

XLI Rule 27 CPC or the petition filed under Order VI Rule 17 CPC.

8. Accordingly, all the CMPs stand dismissed.

(K.R. Mohapatra)
Judge

s.s.satapathy

