

IN THE HIGH COURT OF ORISSA AT CUTTACK

CMP No.466 of 2022

Sankar Chandra Sana and another ***Petitioners***
Mr. Maheswar Mohanty, Advocate
-versus-

Narayan Rabidas and others ***Opp. Parties***

CORAM:
JUSTICE K.R. MOHAPATRA

ORDER

Order No.

26.08.2022

3. 1. This matter is taken up through Hybrid mode.
2. Petitioners in this CMP seek to assail the order dated 29th April, 2022 (Annexure-3) passed by learned Civil Judge (Senior Division), Umorkote in Execution Proceeding No.1 of 2014, whereby an application to attach the suit property was entertained and allowed.
3. Mr. Mohanty, learned counsel for the Petitioners submits that Execution Proceeding No.1 of 2014 was posed to 29th April, 2022 on which date, the Opposite Parties-DHrs filed an application to recover the said land by attaching the suit property. The Petitioners-JDRs were absent on the said date. Although the matter was posted to 10th May, 2022 for orders, but at the later stage on that date, i.e., 29th April, 2022, learned Executing Court entertained the application and issued warrant of attachment for delivery of possession. Being aggrieved by the said order, this CMP has been filed.
- 3.1 Mr. Mohanty, learned counsel for the Petitioners further submits that neither a copy of the petition was served on learned counsel for the JDRs nor they were given an opportunity to

defend their case. In view of the above, he prays for setting aside the impugned order and to remit the matter back to learned executing Court to afford opportunity to contest the petition dated 29th April, 2022.

4. This Court while issuing notice to Opposite Parties, vide order dated 24th May, 2022 in IA No.532 of 2022, as an interim measure, directed that there shall be stay of operation of order dated 29th April, 2022 passed in EP No.01 of 2014 pending before learned Civil Judge (Senior Division), Umerkote till the next date and the said order is operating till date. On perusal of Office note, it appears that delivery of notice on Opposite parties is confirmed, but none appears on their behalf at the time of call.

5. Upon hearing learned counsel for the Petitioners and on perusal of record, it appears that Petitioners are the JDRs in Execution Proceeding No.1 of 2014. A petition for attachment of the suit property and for delivery of possession was filed by the DHrs on 29th April, 2022. There is no material on record to show that copy of the petition was served on learned counsel for the JDRs. However, it is apparent that the JDRs were absent on call. Although the matter was posted to 10th May, 2022 for orders, but learned executing Court entertained the application on the same date at a later stage and passed the impugned order issuing warrant for delivery of possession. On perusal of impugned order, it appears that the said application could not have been entertained on the said date, as in the first hour the Court has already posted the matter to 10th May, 2022 for orders. But it is not understood as to how the said application was entertained on the said date and the impugned order has been passed.

6. In view of the above, while setting aside the order dated 29th April, 2022, this Court remits the matter back to learned executing Court with a direction to give an opportunity of hearing to the Petitioners to file objection and participate in the hearing of the petition dated 29th April, 2022.

7. With the aforesaid direction, the CMP is disposed of.

(K.R. Mohapatra)
Judge

s.s.satapathy

