

IN THE HIGH COURT OF ORISSA AT CUTTACK
CMP No.482 OF 2022

Md. Idris Khan

Petitioner

Mr. Bibhudhananda Muduli, Advocate

-versus-

Bhikari Biswal and another

.... ***Opp. Parties***

CORAM:
JUSTICE K.R. MOHAPATRA

ORDER

23.06.2022

Order No.

01. 1. This matter is taken up through hybrid mode.
2. The Petitioner in this CMP seeks to assail the order dated 4th April, 2022 (Annexure-5) passed in F.A.O. No.25 of 2021, whereby learned District Judge, Jagatsinghpur reversed the order dated 23rd August, 2021 (Annexure-4) passed by learned Senior Civil Judge, Jagatsinghpur in I.A. No.210 of 2021 (arising out of C.S. No.317 of 2021).
3. It is submitted by Mr. Muduli, learned counsel for the Petitioner that Civil Suit No.317 of 2021 has been filed for a declaration that note of possession reflected in the consolidation R.O.R in respect of Lot No.1 of suit schedule land is not correct and illegal. Further, prayer for declaration of right, title and interest over Lot Nos.1 and 2 of the property of the suit schedule land has been made along with other consequential and ancillary relief. It is his submission that Lot No.1 of the suit schedule property was purchased by the predecessor of the Plaintiff from the father of Defendant No.1. However, R.O.R was published in the name of the predecessor

of the Defendant No.1 with a noting in the remark column that the predecessors of the Plaintiff have purchased the Lot No.1. Further, there is an agreement for sale in respect of Lot No.2 of the property in favour of the Plaintiff on 14th April, 1993. Since then, the predecessors of the Plaintiff are in possession over the entire suit land. After death of the father of Defendant No.1, the Defendants got the land mutated in their name and contemplated to alienate the suit property for which the Plaintiff was constrained to file the suit, as aforesaid. Along with the plaint, the Plaintiff also filed I.A. No.210 of 2021 under Order XXXIX Rules 1 and 2 C.P.C. with a prayer to restrain the Defendants from alienating the suit property. Learned Senior Civil Judge, Jagatsinghpur considering the interim application directed both the parties to maintain status quo over the suit land. However, learned District Judge, Jagatsinghpur vide impugned order under Annexure-5 reversed the same and vacated the interim order of status quo. Hence, this CMP has been filed.

4. It is further submitted by Mr. Muduli, learned counsel for the Petitioner that since the cause of action for filing of the suit arose after closure of the consolidation operation under Section 41 of the Odisha Consolidation of Holdings and Prevention of Fragmentation of Land Act, 1972, the suit is maintainable. Consolidation R.O.R. also reflects that the predecessors of the Plaintiff are the purchasers of the suit schedule property. There is also an agreement for sale in respect of Lot No.2 of the suit schedule property. Thus, the Plaintiff has a prima facie case in his favour. Balance of convenience also leans in his favour and he will suffer

irreparable loss, if the interim order of injunction/status quo is not granted in his favour restraining the Defendants from alienating the suit property. Learned Appellate Court failed to appreciate the same and passed the impugned order without considering the requirement of Order XXXIX Rules 1 and 2 C.P.C. Hence, the impugned order is not sustainable and is liable to be set aside.

5. Taking into consideration the submission made by learned counsel for the Petitioner and on perusal of the record, it appears that the consolidation R.O.R. stands in the name of the predecessor of the Defendants. After death of father of the Defendant No.1, the Defendants got the land mutated in their name. Law is well settled that a true owner cannot be restrained from enjoying his property independently. If any alienation is made during pendency of the suit, the same would be guided under Section 52 of the Transfer of Property Act, 1882. Since the suit is pending for consideration, this Court does not express any opinion with regard to maintainability of the same. On perusal of the impugned order under Annexure-5, this Court finds no infirmity in the impugned order.

6. Accordingly, this CMP merits no consideration and stands dismissed.

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

(K.R. Mohapatra)
Judge