

IN THE HIGH COURT OF ORISSA AT CUTTACK
CMP No.966 OF 2018

Kalandi Nayak

.....

Petitioner

Mr. S.C. Acharya, Advocate

-versus-

Ramakanta Nayak

....

Opp. Party

Mr. Maheswar Mohanty, Advocate

CORAM:
JUSTICE K.R. MOHAPATRA

ORDER
29.07.2022

Order No.

5. 1. This matter is taken up through Hybrid mode.
2. Although the matter was listed today for orders taking consent of learned counsel for the parties, the matter is taken up for final disposal.
3. This CMP has been filed assailing the order dated 19th May, 2018 passed by learned Civil Judge (Junior Division), Bhadrak in CS No.208 of 2015, whereby an application for stay of further proceeding of the suit filed by the present Petitioner/Defendant has been rejected.
4. Mr. Acharya, learned counsel for the Petitioner submits that the suit has been filed by Plaintiff/Opposite Party for demarcation and permanent injunction. The land involved in the suit is the subject matter of a consolidation proceeding, which at present is pending before this Court in W.P.(C) No.6359 of 2018. This Court, while issuing notice in the said writ petition, vide order dated 26th April, 2018, passed interim order directing the parties to maintain *status quo* as on that date in respect of the disputed property and the said interim order is continuing till date. In view of the aforesaid interim order passed in the aforesaid writ petition, the relief sought for in the

suit cannot be granted. The Defendant/Petitioner, therefore, filed an application (IA No.1037 of 2018) for stay of further proceeding in the suit till disposal of the aforesaid writ petition.

4.1 It is his submission that learned Civil Judge (Junior Division), Bhadrak, without considering that this Court is seisin of the matter in respect of the property involved in the suit, rejected the petition on the ground that said order does not hamper the proceeding of the suit. Learned trial Court further observed that the Defendant/Petitioner has not mentioned any provision of law in the petition he has filed. He, therefore, submits that the impugned order is not sustainable in the eye of law and prays for setting aside the same.

5. Mr. Acharya, learned counsel for the Petitioner further submits that this Court, while issuing notice in the CMP, vide order dated 17th July, 2018 while directing to list the matter along with W.P.(C) No.6359 of 2018, directed stay of further proceeding in CS No.208 of 2015 pending before learned Civil Judge (Junior Division), Bhadrak till the next date. The said interim order, however, has been vacated vide order dated 6th July, 2022.

6. Mr. Mohanty, learned counsel for the Plaintiff/Opposite Party submits that the order passed by Commissioner, Settlement and Consolidation, Balasore in Consolidation Revision No.378 of 2014 has not been stayed by this Court. Thus, there is no impediment to proceed with the suit pending before learned trial Court. He further submits that learned trial Court has rightly held that the interim order of status quo granted by this Court shall no way restrict the learned trial Court from proceeding with the suit, which is filed for demarcation and permanent injunction, as the

property involved in both the proceedings are different. Therefore, there is no impediment for learned trial Court to proceed with suit.

7. Taking into consideration the rival contentions of the parties and on perusal of records of CMP as well as W.P.(C) No.6359 of 2018, it is not clear that the land involved in the consolidation proceeding as well as Civil Suit are one and the same. It is, however, apparent that assailing the order dated 1st December, 2017 passed by Commissioner, Settlement and Consolidation, Balasore in Consolidation Revision No.378 of 2014, W.P.(C) No.6359 of 2018 has been filed and order of status quo in respect of the land involved therein is continuing. Nomenclature should not be taken into consideration for adjudication of any matter. Rather, it is the subject matter of the dispute and the relief sought for should be taken into consideration while adjudicating a petition.

8. In view of the above, the petition for stay of further proceeding of the suit requires fresh consideration.

9. Accordingly, the impugned order 19th May, 2018 passed by learned Civil Judge (Junior Division), Bhadrak in CS No.208 of 2015 is set aside. The matter is remitted back to learned trial Court for fresh adjudication of the petition filed by Defendant /Petitioner for stay of further proceeding in CS No.208 of 2015.

10. The CMP is disposed of accordingly.

11. Record of W.P.(C) No.6359 of 2018 be sent back to the concerned Section immediately.

Issue urgent certified copy of the order on proper application.

(K.R. Mohapatra)
Judge