

IN THE HIGH COURT OF ORISSA AT CUTTACK

CMP No. 521 of 2022

Anusuya Nanda

....

Petitioner

Mr. M.M. Swain, Advocate

- Versus -

Sanjay Jajodia

....

Opposite Party

CORAM:

JUSTICE SASHIKANTA MISHRA

ORDER

17.06.2022

Order No.

1.

1. This matter is taken up through hybrid mode.
2. The petitioner is the plaintiff-appellant in RFA No.99 of 2022 pending in the Court of 2nd Addl. District Judge, Cuttack. The sole opposite party is the lis pendens purchaser (defendant-respondent no.11) of the suit property. During pendency of the RFA, the petitioner-appellant filed an application under Order 39, Rules 1 & 2 read with Section 151 of CPC to restrain the opposite party (respondent no.11) from entering upon the suit schedule land, not to alienate any part of the said land, not to create third party interest of the suit schedule properties and not to change the nature and character of the same till disposal of the I.A.. The said application has been registered as I.A. No. 1 of 2022. The prayer for passing ex-parte order of injunction under Order 39, Rule 3 of CPC was rejected by the Court below by order dated 27.05.2022 and notice was issued to the Respondent No. 11 by Special Messenger. On the date fixed, i.e. on 31.05.2022, the opposite party (Respondent no.11) entered appearance through his lawyer and filed a petition for time to file show cause. At that stage, the petitioner (appellant)

filed a petition under Section 151 of CPC with prayer for a direction to maintain status-quo and to not proceed with further construction over the suit land. Said petition was supported by some photographs, some of which have been enclosed to the writ petition. Though copy of the said petition was served upon the counsel for the other side and the petition was heard, yet learned Court below was not inclined to pass any prohibitory order on the ground that he cannot do so without hearing the matter from other side. Since the Court below has specifically noted that other side was heard after service of copy of the petition, it is not understood what further hearing was required.

3. Be that as it may, since the matter is posted to 22nd June, 2022 for passing of order in the I.A., this Court deems it proper to dispose of this CMP by granting liberty to the petitioner to file a fresh application under Section 151 CPC which shall be considered and disposed of by the Court below on the same day. Till then, status quo be maintained in respect of the suit land

4. Issue urgent certified copy as per Rules.

(Sashikanta Mishra, J)
Vacation Judge