

IN THE HIGH COURT OF ORISSA AT CUTTACK

CMP NO. 527 OF 2022

Tapan Kumar Behuria ***Petitioner***
Mr. Satrugna Dash, Advocate
-versus-
Sukanta Kumar Sahu ***Opp. Party***
Mr. Sambit Rath, Advocate

**CORAM:
JUSTICE K.R. MOHAPATRA**

**ORDER
03.08.2022**

Order No.

3. 1. This matter is taken up through hybrid mode.
2. Order dated 21st May, 2022 (Annexure-1) passed by learned District Judge, Jajpur in FAO No.14 of 14 of 2022 filed by Opposite Party is under challenge in this CMP, whereby he modified the order dated 23rd April, 2022 passed by learned Senior Civil Judge, Jajpur in I.A. No. 48 of 2022 (arising out of C.S. No.147 of 2022) directing the parties to maintain status quo over the suit property.
3. Mr. Dash, learned counsel for the Petitioner submits that C.S. No. 147 No. 2022 has been filed by the Petitioner for declaration and permanent injunction. Along with the plaint, the Petitioner filed an application in I.A. No. 48 of 2022 under Order XXXIX Rules 1 and 2 C.P.C. to restrain the Defendant-Opposite Party from creating 3rd party interest in the suit property. Learned Senior Civil Judge, Jajpur vide his order dated 23rd April, 2022 directed the parties to maintain status quo over the suit property. Assailing the same, the Opposite Party preferred FAO No. 14 of 2022 under Order XLIII Rule 1(r)

C.P.C. In the said appeal, learned District Judge, Jajpur modifying the order of status has passed the following order:

“The FAO is allowed on contest without any cost. The Respondent-Plaintiff is restrained from causing any disturbance in the possession of the Appellant-defendant over the suit plot no.608 and the Appellant-Defendant is restrained from alienating the whole or part of the suit land without permission of trial court and until final hearing of the suit on merit. The impugned dt.23.04.2022 is accordingly modified.”

3.1 Mr. Dash, learned counsel for the Petitioner further submits that when no application to restrain the Plaintiff from disturbing the possession of Defendant-Opposite Party was filed, no such relief could have been granted in the appeal. In support of his case, he relied upon the decision in the case of ***Bachhaj Nahar –v- Nilima Mandal and others***, reported in AIR 2009 SC 1103 and submitted that when no prayer to restrain the Plaintiff from interfering with the possession of Defendant-Opposite Party has been made before learned trial court, no such prayer could have been granted to the Opposite Party in an appeal under Order XLIII Rule 1(r) C.P.C.. He, therefore, prays for setting aside the impugned order to the aforesaid extent.

4. Mr. Rath, learned counsel for the Opposite Party objecting to such submission contended that the Plaintiff-Petitioner is constantly interfering with the possession of Defendant-Opposite Party. He also read out the provision under Order XXXIX Rules 1 and 2 C.P.C. and submitted that the Court can pass suitable order in the petition under Order XXXIX Rules 1 and 2 C.P.C. during pendency of the suit. He, therefore, submits that there is no illegality in the impugned order and prays for dismissal of CMP.

5. Taking into consideration the rival contentions of the parties, this Court is of the considered view that when no prayer has been made on behalf of Defendant-Opposite Party before learned trial Court to restrain the Plaintiff-Petitioner from interfering with the possession of Defendant and FAO No. 14 of 2022 was filed assailing the order dated 23rd April, 2022 passed by learned trial Court directing the parties to maintain status quo over the suit property, no relief restraining the Plaintiff-Petitioner from creating disturbance in the possession of Defendant-Opposite Party could have been passed. Thus, the impugned order under Annexure-1 is set aside to the aforesaid extent. Rest part of the direction in the impugned order is not interfered with.

6. The CMP is accordingly disposed of.

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

संस्थानिक न्याय (K.R. Mohapatra)
Judge

bks