

IN THE HIGH COURT OF ORISSA AT CUTTACK

CMP NO. 563 OF 2022

Sandhyarani Khatei

....

Petitioner

Mr. Brahmananda Tripathy, Advocate

-versus-

Manoranjan Khatei and another

....

Opp. Parties

Mr. Tusar Kumar Mishra, Advocate

(For Opp. Party Nos.1 and 2)

CORAM:

JUSTICE K.R. MOHAPATRA

ORDER

21.10.2022

Order No.

5. 1. This matter is taken up through hybrid mode.
2. The Petitioner in this CMP seeks to assail the order dated 31st March, 2022 (Annexure-3) passed by learned 2nd Additional Senior Civil Judge, Bhubaneswar in I.A. No.05 of 2021 (arising out of C.S. No. 809 of 2018), whereby an application under Section 151 C.P.C. filed by her has been rejected.
3. Mr. Tripathy, learned counsel for the Petitioner submits that the Plaintiff is the Petitioner in this CMP. Along with the plaint, she filed an application under Order XXXIX Rules 1 and 2 C.P.C. in I.A. No. 1 of 2018. Learned trial Court vide order dated 7th November, 2019 directed the parties to maintain *status quo* over 'B' Schedule property. It is contended that during subsistence of the order of *status quo*, the Defendant Nos. 2 and 3 alienated the property to one Pradeep Kumar Swain (not made a party to this case) and violating the order of *status quo*, he started construction over 'B' and 'C' Schedule properties. Hence, the Petitioner filed I.A. No. 3 of 2020 under Section 151 C.P.C. seeking for police assistance to implement

the order of *status quo*. Further, an application under Order XXXIX Rule 2-A C.P.C. in I.A. No. 4 of 2021 has also been filed for taking appropriate action for violation of the order of *status quo*. Learned trial Court without taking into consideration the law prevailing in the field to entertain an application under Section 151 C.P.C. rejected the same holding that there is no material on record to show that the Opposite Parties have violated the order of *status quo*. Learned trial Court further observed that direction to the police to take steps for maintenance of *status quo* may cause chaos between the parties.

4. Mr. Tripathy, learned counsel for the Petitioner relied upon the decision in the case of ***Manoj Manjari Mohapatra and another – v- Sri Kapila @ Kapilendra Mohapatra and another***, reported in 2021 (II) ILR- CUT 230, wherein this Court has laid down the principles to entertain an application under Section 151 C.P.C.. He further submits that earlier an application under Section 151 C.P.C. in I.A. No. 3 of 2020 was filed, which was withdrawn vide order dated 15th December, 2020 with liberty to file a fresh application. Hence, the present I.A. is maintainable. In support of his plea, Mr. Tripathy, learned counsel relied upon the case law in ***R.M. Sundaram @ Meenakshi Sundaram –v- Kayarohanasamy and Neelayadakshi Amman Temple (through its Executive Officer)***, reported in AIR Online 2022 SC 1022 and submits that the dismissal of earlier interim application being not on merit, the instant interim application under Section 151 C.P.C. is maintainable, as the principles of *res judicata* will not be applicable. These material aspects were not considered by learned trial Court while passing the impugned order. Hence, the impugned order is not sustainable.

5. Mr. Mishra, learned counsel for the Opposite Party Nos. 1 and 2 submits that the order of *status quo* was passed prior to the date of appearance of the Defendants. There is no material on record to establish that the Opposite Party Nos. 1 and 2 have sold the property in respect of which the interim order is continuing. Further, said Sri Pradip Kumar Swain in whose favour the land is allegedly sold is not a party either to the I.A. or to this CMP. Similar application in I.A. No. 3 of 2020 filed under Section 151 C.P.C. has been dismissed without granting any leave to file a fresh one. Hence, the present interim application under Section 151 C.P.C. is not maintainable. The allegations made in the petition require factual adjudication. In fact, the Petitioner has filed an application under Order XXXIX Rule 2-A C.P.C. in I.A. No. 4 of 2021 for taking appropriate action for violation of the order of *status quo*. Hence, learned trial Court has committed no error in dismissing the petition under Section 151 C.P.C.. He, therefore, prayed for dismissal of CMP.

6. Upon hearing learned counsel for the parties and on perusal of the case record including the impugned order under Annexure-3, it reveals that the Petitioner has alleged that the Opposite Party Nos. 1 and 2 in violation of the interim order of *status quo* have sold some properties to different persons including Sri Pradip Kumar Swain. Neither details of properties allegedly sold nor the particulars of sale have been mentioned in I.A. No. 5 of 2021 (Annexure-2). The person against whom allegation of forcible construction is made, is neither made party to the I.A. or to this CMP. As rightly pointed out by Mr. Mishra, learned counsel for the Opposite Party Nos. 1 and 2, the allegation made in the I.A.No.5 of 2021 requires factual adjudication. Further, an application under Order XXXIX Rule 2-A C.P.C. in I.A.

No. 4 of 2021 is pending for consideration before learned trial Court. Hence, entertaining an application for assistance of Police for implementation of the interim order of *status quo* at this stage will not be proper. In the facts and circumstances of the case, the case law relied upon by Mr. Tripathy, learned counsel for the Petitioner, will be of no assistance to her case. As such, learned trial Court has committed no error in rejecting the petition under filed under Section 151 C.P.C. (I.A. No. 5 of 2021). Hence, the impugned order under Annexure-3 warrants no interference. But, the petition under Order XXXIX Rule 2-A C.P.C. in I.A. No. 4 of 2021 requires early adjudication, in the facts and circumstances of the case.

7. The CMP is, accordingly, disposed of with the observation stated above.

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

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