

IN THE HIGH COURT OF ORISSA AT CUTTACK

CMP No. No. 570 of 2022

Ramesh Chandra Jena

..... Petitioner

Mr. P.C. Dash, Advocate

-versus-

Sukesh Chandra Jena and another

.... Opp. Parties

CORAM:

JUSTICE K.R. MOHAPATRA

ORDER

16.11.2022

Order No.

5. 1. This matter is taken up through Hybrid mode.
2. Order dated 9th May, 2022 (Annexure-4) passed by learned Senior Civil Judge, Jaleswar in IA 66 of 2021 (arising out of CS No.355 of 2019) is under challenge in this CMP, whereby an application filed by Opposite Party No.1- Sukesh Chandra Jena under Section 151 CPC for grant of leave to construct a pucca house, has been rejected.
3. Learned counsel for the Petitioner submits that admittedly the suit land is ancestral joint family property and there is no partition by metes and bound. By obtaining financial assistance under Prime Minister Awas Yojana (PMAY), the Opposite Party No.1 filed an application for construction/ renovation of his thatched house. It is his submission that considering that the suit land is ancestral joint family property of the parties to the suit and there is no partition by metes and bound, learned trial Court had earlier passed an order of status quo to be maintained by the parties over the suit land. But the Opposite Party No.1 clandestinely obtained the work order

No.868/2019-20 on 24th September, 2020 issued by the Block Development Officer, Bhogarai and made an application under Section 151 CPC for permission to renovate his residential house. If Opposite Party No.1 is permitted to construct his residential house there will be difficulty in allotting share between the parties. This material aspect was lost sight of learned trial Court while allowing an application vide order under Annexure-4. Hence, he prays for setting aside the impugned order.

4. Although notice has been served on Opposite Party No.1, but none appears on his behalf, as reported by the Registry.

5. Upon hearing learned counsel for the Petitioner and on perusal of record, it appears that the disputed property has been recorded jointly. The suit land is ancestral property of the Petitioner and Opposite Parties. CS No. 355 of 2019 has been filed for partition. There has been no partition by metes and bound. It further appears that the parties for their convenience are living separately by constructing separate houses over the suit land. It is also not disputed by the Petitioner that the house of the Opposite Party No.1 is in a dilapidated condition. Thus, obtaining a work order from BDO, Bhogarai, the Opposite Party No.1 filed an application before learned trial Court for grant of permission to construct/repair his residential house. It also borne out from record that Opposite Party No.1 does not have sufficient means to repair the house for which he obtained financial assistance from the Government. Since the Opposite Party No.1 is going to construct/repair his house on the said area, there can be no difficulty for the Petitioner, as admittedly parties

are living separately over the suit land by constructing separate houses for their convenience.

6. Accordingly, I find no infirmity in the impugned order so as to interfere with. The CMP being devoid of any merit stands dismissed.

7. Interim order dated 2nd August, 2022 passed in IA No.643 of 2022 stands vacated.

(K.R. Mohapatra)
Judge



s.s.satapathy