

IN THE HIGH COURT OF ORISSA AT CUTTACK
CMP No. 589 OF 2022

Anirudha Behera

....

Petitioner

Mr. Ashit Kumar Dash, Advocate
on behalf of Mr. Tapobanta Barik, Advocate

-versus-

Bikash Mohan Barik

....

Opp. Party

CORAM:
JUSTICE K.R. MOHAPATRA

ORDER

07.09.2022

Order No.

2. 1. This matter is taken up through hybrid mode.
2. Mr. Dash, learned counsel placed the matter being authorized by Mr. Barik, learned counsel for the Petitioner.
3. The Petitioner in this CMP seeks to assail the order dated 22nd April, 2022 (Annexure-4) passed in F.A.O. No.108 of 2021, whereby learned District Judge, Khurda at Bhubaneswar while setting aside the order dated 1st November, 2021 passed by learned Civil Judge, Bhubaneswar in I.A. No.01 of 2021 (arising out of C.S. No.1171 of 2021) vacated the order of status quo granted in his favour.
4. Mr. Dash, learned counsel appearing for the Petitioner submits that learned appellate Court while adjudicating the appeal has confused with prima facie case and prima facie title and proceeded on a misconception that the Opposite Party has a prima facie title over the suit property without considering that the land was alienated violating the terms of General Power of Attorney as well as without obtaining permission under Section

22 of the Odisha Land Reforms Act, 1960 (for short 'the Act'). Thus, the transaction, if any, in favour of the Petitioner and his vendors is void *ab initio*. The Petitioner being the legal heir of the recorded tenants has a right over suit property. Learned trial Court considering the same directed the parties to maintain status quo over the suit property. However, learned appellate Court without considering the above material aspect, set aside the order dated 1st November, 2021 passed by learned trial Court and vacated the order of status quo, which is not sustainable in the eyes of law.

5. Upon hearing learned counsel for the Petitioner and on perusal of the record including the impugned order under Annexure-4, it is apparent that the land was recorded in the name of Kuber Behera and Braja Sahoo. After obtaining permission under Section 22 of the Act in OLR Case No.13 of 1988, the legal heirs of recorded tenants, namely, Chakradhar Behera and Balabhadra @ Balaram Behera alienated the suit property in favour of Choudhury Mayabati Dash. Ultimately, the Petitioner has purchased the suit property and is in possession over the suit land. After purchase, the Petitioner has already mutated the land in his name by paying land revenue. Learned appellate Court while adjudicating the appeal observed that the Opposite Party will suffer irreparable loss, if an order of status quo is allowed to continue.

6. The contention of learned counsel for the Petitioner to the effect that no permission was obtained under Section 22 of the Act is a matter of adjudication. On the other hand, prima facie

there is material available on record to show that the land was alienated in favour of Choudhury Mayabati Dash after obtaining permission under Section 22 of the Act in OLR Case No.13 of 1988. Considering the same, learned trial Court came to hold that the person in possession over the land cannot be injuncted without due process of law and no order of injunction can be granted.

7. Taking into consideration the submission of learned counsel for the Petitioner and discussion made above, I am of the considered opinion that learned appellate Court has committed no error in vacating the order of status quo as it appears that the Opposite Party is in possession over the suit land and is exercising his right over the same pursuant to the sale deed executed and mutation made in his favour. Thus, I find no infirmity in the impugned order under Annexure-4.

8. Accordingly, the CMP being devoid of any merit stands dismissed.

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

(K.R. Mohapatra)
Judge