

IN THE HIGH COURT OF ORISSA AT CUTTACK

FAO No.82 of 2015

Smt. Yashodhara Das

....

Appellant

Mr. Maheswar Mohanty, Advocate

-versus-

Sri Rabinarayan Das and others

....

Respondents

Ms. Zenish Wallace, Advocate on behalf of Mr. S. Lal, for

Respondent Nos.1 to 4

Mr. Karunakar Das, A.S.C. for Respondent No.5

CORAM:

JUSTICE B. P. ROUTRAY

ORDER
19.10.2022

Order No.

05.

1. Heard Mr. Maheswar Mohanty, learned counsel for the Appellant, Ms. Zenish Wallace, on behalf of Mr. S. Lal, learned counsel for Respondent Nos.1 to 4 and Mr. Karunakar Das, learned Additional Standing Counsel for State-Respondent No.5.

2. Though the appeal was listed "For Orders", but with consent of the parties, the same is taken up for hearing.

3. Mr. Mohanty, learned counsel for the Appellant submits that during pendency of the appeal, Respondent No.1 died and all his LRs being on record, no further substitution is required. Ms. Wallace, learned counsel for the Respondent Nos.1 to 4 agrees with his submission. Accordingly, the name of Respondent No.1 is deleted.

4. Before coming to the merits of the appeal, Mr.Mohanty, submits to confine his challenge in respect of Annexure-6 only and states that the challenge in respect of Annexure-3 is not pressed. As such, the appeal is confined in respect of Annexure-6 only.

5. It is seen that in Probate Misc. Case No.10 of 2011, present Appellant, namely, Smt. Yashodhara Das is the applicant. The order was passed in her favour by the probate court, i.e. District Judge, Balasore. Subsequently, present Respondents came up with Revocation Misc. Case No.164 of 2011 praying to revoke the order passed in the probate case in favour of the Appellant on the ground of suppression of facts and that, they were not impleaded as parties. In the revocation case, a petition under Order 39 Rules 1 and 2, C.P.C. was filed. Learned Probate Court passed an interim order in favour of the present Respondents with a direction not to alienate the properties during pendency of the revocation case. Subsequently thereafter, present Appellant, who was the Respondent in the Revocation Misc. Case, filed a petition under Order 39 Rule 4, C.P.C. for variation of such interim order. This was rejected by the learned District Judge, Balasore.

6. While rejecting the prayer under Order 39 Rule 4, learned District Judge, Balasore held that the interim order was passed for preserving the property in dispute pending decision in the revocation case. The relevant operative portion of the order of the learned District Judge, Balasore is reproduced below.

“Although it appears that there has not been any compliance of Rule 3-A of C.P.C. but it is seen

that the O.P. No.1 remained silent for more than two years on the matter and has filed this application when the case is on the verge of being disposed of. So, from the petition of the O.P. No.1 no change in circumstances is noticed. The ex parte injunction order has been passed preventing alienation out of the Lot No.1 schedule property. So, the order is not one restraining the O.P. from the said property. So, I am of the view that the order has been passed for preserving the property in dispute. So, I find no reason now to vacate the order in question. Hence, the petition is rejected.”

7. On such conspectus of facts as stated above, the main consideration of learned District Judge, Balasore to refuse the prayer of the Appellant is that, if the property would be alienated in the meantime, the purpose of Revocation Misc. Case would be frustrated. It is true that the order passed in probate case is in favour of the Appellant giving enjoyment of right over the property in question including right to alienate also. The interim order passed is to restrain the Appellant from alienating the same and in case of such alienation, the purpose of Revocation Misc. Case would definitely be frustrated. Therefore, no merit is seen in the appeal to interfere with the impugned order.

8. At this stage, it is seen that the Revocation Misc. Case is of the year 2011. So this Court thinks it proper to direct the learned District Judge, Balasore to proceed with the matter expeditiously to dispose of the case on merit and preferably within a period of three months from the date of receipt of a certified copy of this order.

9. Accordingly, the FAO is disposed of with the aforesaid observations.

10. An urgent certified copy of this order be granted on proper application.

(B.P. Routray)
Judge

