

IN THE HIGH COURT OF ORISSA AT CUTTACK

C.M.P. No.138 of 2017

Jambeswar Sahoo & Ors.

....

Petitioner(s)

Mr. P.K.Rath, Advocate

-versus-

Rani Bewa & Ors.

....

Opposite Party(s)

Mr.D.P.Dash , Advocate

Mr.R.K.Mohanty, Sr.Advocate

CORAM:

JUSTICE BISWANATH RATH

ORDER

23.03.2022

Order No.

9.
 1. Heard learned counsel appearing for the parties.
 2. This is a Civil Miscellaneous Petition of the year 2017 with an order of interim stay of stay of Execution Proceeding No. 12 of 2001 since 21.2.2017. Background involving the case is that undisputedly petitioners are not involved in the suit involving execution case being taken up. It appears, petitioners as third party filed application for inclusion of them to contest the execution case but under a wrong nomenclature under Order 1, rule 10 of the Code of Civil Procedure. For there is wrong nomenclature, there is an attempt for conversion of the application though it should have been an application under Order 21, rule 97 and/or Order 21, rule 97 of the Code of Civil procedure since petitioners were not involved in the suit proceeding.
 3. For the opinion of this Court nomenclature involving the application remains immaterial, it is only looking to the claim therein is taken care of. This Court further finds on allowing the Civil

Miscellaneous Petition carried to this Court, in Civil Miscellaneous Petition No.,303 of 2016, this Court was declined to interfere in the impugned order therein. In the process, when the application of the petitioners at Annexure-6 is taken up, an application is filed involving an attempt being taken to evict the petitioners from the disputed land in pendency of decision on petitioners main application. It is at this stage an attempt was made to stall the application. Petitioners attempt being declined, petitioners compelled to file Civil Miscellaneous Petition 138 of 2017 taken up herein Mr.Rath, learned counsel submitted that once third parties application is pending consideration in the pendency of Execution Proceeding in the event petitioners are evicted, there remain nothing to be adjudicated in the ultimate consideration of the third parties main petition.

4. Mr.Dash, learned counsel appearing for the decree holder contested the entertainability of the application at Aannexure-6. Mr.Dash, learned counsel further submits that the trial court considering that the 3rd party is not in possession over the disputed property, the trial court rightly declined to grant protection in favour of the 3rd party and therefore attempted to justify the impugned order. For the opinion of this Court, since the main application at the instance of third party is pending, it is not appropriate for this Court to have its opinion on the entertainability of the case at this stage. It is open to the parties on contest to take their stand in the contest of the main proceeding at the instance of third parties, the present petitioners.

5. Considering the rival contentions of learned counsel appearing for the parties and looking to the document involved, this Court finds undisputedly the application of the petitioners at Anenxure-6 remains to be pending. In the previous round of litigation, this Court declined to entertain the attempt of the opposite parties on the maintainability of such application. Looking to the nature of contest advanced by 3rd parties in filing the application at Anenxure-6, for the opinion of this

Court that in the event the application at Annexure-6 is pending in the Executing Court, the Executing Court became duty bound to take a decision on such application prior to finalizing the Execution Proceeding. But in the pendency of such application, there should not be eviction of such persons. In the process, this Court interfering in the order of the Executing Authority under Annexure-1, sets aside the same and directs maintenance of status quo over the disputed property by all concerned at least till the outcome in the application at Annexure-6 and or disposal of such application along with Execution Case No. 12 of 2001. Keeping in view the request of the parties involved requesting for targeting decision on Annexure-6, this Court fixes the date of appearance of all parties in the trial court to 30.03.2022 and the application at the instance of 3rd party pending be decided within a period of six weeks thereafter.

6. The Civil Miscellaneous Petition stands disposed of with the observation and direction made hereinabove.

(Biswanath Rath)

Judge