

IN THE HIGH COURT OF ORISSA AT CUTTACK
CMP No. 646 OF 2022

Pratap Kumar Sahu and another ***Petitioners***
Mr. Ajit Kumar Panda, Advocate

-versus-

Naba Kishore Sahu and another ***Opp. Parties***

CORAM:
JUSTICE K.R. MOHAPATRA

ORDER

26.08.2022

Order No.

01. 1. This matter is taken up through hybrid mode.
2. The Petitioners in this CMP seeks to assail the order dated 18th May, 2022 (Annexure-1) passed by learned Civil Judge (Junior Division), Banki in C.M.A. No.14 of 2021 (arising out of C.S. No.13 of 2020), whereby he directed the I.I.C. of Banki Police Station to take necessary steps as per law to ensure implementation of the order of status quo dated 6th January, 2021 passed in I.A. No.22 of 2020 (arising out of C.S. No.13 of 2020).
3. Mr. Panda, learned counsel for the Petitioners submits that along with the plaint, the Plaintiffs-Opposite Parties filed an application in I.A.No.22 of 2020 under Order XXXIX Rules 1 and 2 C.P.C. for injunction. While entertaining that application, learned trial Court vide order dated 6th January, 2021 has directed both the parties to maintain status quo over the suit land. Subsequently, alleging violation of the order of status quo, an application in C.M.A. No.8 of 2021 was filed under Order XXXIX Rule 2 (A) C.P.C. A separate application in C.M.A. No.14 of 2021 was also filed under Section 151 C.P.C. seeking for police assistance to implement the order of status quo. On the

prayer of the present Petitioners, learned trial Court vide order dated 4th September, 2021 directed for analogous hearing of both the C.M.A. Nos.8 and 14 of 2021. Subsequently, the Plaintiffs- Opposite Parties filed an application on 7th October, 2021 for variation of the said order. When that application was pending for consideration, learned Civil Judge (Junior Division), Banki vide order dated 18th May, 2022 took up C.M.A. No.14 of 2021 independently and passed the impugned order.

4. It is submitted by Mr. Panda, learned counsel for the Petitioners that the impugned order under Annexure-1 is in direct contradiction to the order dated 9th September, 2021 as C.M.A. No.14 of 2021 could not have been heard independently, when the order dated 4th September, 2021 is in force. Petition dated 7th October, 2021 is yet to be disposed of. As such, the impugned order under Annexure-1 is an abuse of process of Court and is liable to be set aside.

5. Taking into consideration the submission made by learned counsel for the Petitioner and on perusal of the impugned order under Annexure-1, it appears that the factual submission made by learned counsel is correct. At the same time, learned trial Court must see that the order passed by it is respected. Since the petition under Section 151 C.P.C. seeking for police assistance for implementation of the order of status quo is urgent in nature, an interim order in the said application could have been passed pending disposal of the said C.M.A. No.14 of 2021 along with C.M.A. No.8 of 2021. Since learned trial Court passed the order exercising discretion keeping in mind the prevailing situation, I am not inclined to interfere with

the same. Learned trial Court ought to have taken care to deal with the petition dated 7th October, 2021 before passing the order dated 18th May, 2022. Probably, learned trial Court lost sight of order dated 4th September, 2021 and the petition dated 7th October, 2021 as well, while considering the C.M.A. No.14 of 2021.

6. In view of the above, this Court disposes of the CMP with an observation that the order dated 18th May, 2022 shall be treated to be an interim order and shall continue till disposal of the petition dated 7th October, 2021 or hearing of C.M.A. Nos. 8 and 14 of 2021 analogously as would be directed by learned trial Court, depending upon the facts and circumstances of the case.

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

(K.R. Mohapatra)
Judge

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