

IN THE HIGH COURT OF ORISSA AT CUTTACK

CMP No. 647 of 2022

Gouranga Sahoo

..... ***Petitioner***

Mr. Brahma Nanda Tripathy, Advocate

-versus-

Hadubandhu Sahoo

.... ***Opp. Party***

CORAM:

JUSTICE K.R. MOHAPATRA

ORDER

17.08.2022

Order No.

1. This matter is taken up through Hybrid mode.
2. Petitioner in this CMP seeks to assail the order dated 28th June, 2022 (Annexure-6) passed by learned Civil Judge (Junior Division), Bhubaneswar in IA No.4 of 2022 (arising out of CS No.1305 of 2019, whereby, an application filed by the Plaintiff/Petitioner under Section 151 CPC to direct the Police personnel to implement the order of *status quo* dated 2nd November, 2019, was rejected.
3. Mr. Tripathy, learned counsel for the Petitioner submits that the Plaintiff is the rightful owner of the suit property. Since the Defendant created disturbance in his peaceful possession, CS No.1305 of 2019 was filed for a decree of permanent injunction and in the alternative, Petitioner prayed for recovery of possession, if he is found to be dispossessed during pendency of the suit. Along with the plaint, the Petitioner also filed an application under Order XXXIX Rules 1 and 2 CPC in IA No.1 of 2019. The said application was disposed of vide order dated 2nd November, 2019 (Annexure-2) directing the parties to the suit to maintain *status quo* over the suit property.

As the Defendant in utter defiance to order of *status quo* started digging of trenches over the suit property for which the Petitioner filed a petition under Order XXXIX Rule 2-A CPC. He also filed IA No.2 of 2022 under Section 151 CPC for the aforesaid relief. Learned trial Court, without appreciating the matter in its proper perspective, rejected the application erroneously holding that the Petitioner is not in possession over the suit land.

3.1 Mr. Tripathy, learned counsel further submits with vehemence that taking into consideration that the Petitioner is in possession over the suit land order of *status quo* has been passed. It is the duty of the Court to see that the order passed by it is respected. In support of his submission, he also placed reliance on a decision of this Court in the case of ***Manoj Manjari Mohapatra Vs. Sri Kapila @ Kapilendra Mohapatra and another***, reported in 2021 (II) ILR-CUT 230, wherein this Court held that the Court has power to restore the possession in exercise of power under Section 151 CPC in case of eviction of a party in violation of the injunction / *status quo* order. In the present case, violating the order of *status quo*, the Defendant is trying to dispossess the Plaintiff/Petitioner by digging trenches over the suit property. This aspect has not been considered by learned trial Court while adjudicating the matter. In view of the above, he prays for setting aside the impugned order and to direct the local Police to implement the order of *status quo* under Annexure-2.

4. Upon hearing learned counsel for the Petitioner and on perusal of the record, more particularly the order under Annexure-2, it reveals that learned trial Court has never held

the Petitioner is in possession over the suit property. The trial Court has passed the order of *status quo* taking into consideration the series of litigations between the parties and that both the parties are on the same patch of land, i.e., for an area Ac.0.040 decimal. Thus, the allegation of digging of trenches over the suit land by the Opposite Party/Defendant in violation of order of *status quo* is a matter which can be established by leading cogent evidence. It also appears that application under Order XXXIX Rule 2-A CPC has been filed alleging violation of order of *status quo* under Annexure-2. In that view of the matter, this Court is of the considered opinion that directing Police to implement the order of *status quo* may create more confusion than resolving the issue. Unless it is determined that the Opposite Party/Defendant has actually violated the order of injunction, which is a matter to be established by the Plaintiff in the petition under Order XXXIX Rule 2-A CPC, it would not be proper to direct the Police to implement the order of *status quo*. In that view of the matter, I find no infirmity in the order impugned herein.

5. Accordingly, the CMP is disposed of with a direction that learned trial Court shall do well to make an endeavour to dispose of the petition under Order XXXIX Rule 2-A CPC at an early date. Parties are directed to cooperate learned trial Court for early disposal of the said petition.

Issue urgent certified copy of the order on proper application.

(K.R. Mohapatra)
Judge