

IN THE HIGH COURT OF ORISSA AT CUTTACK
CMP No. 648 OF 2022

Nabakishore Pruseth ***Petitioner***
Mr. Byomokesh Sahoo, Advocate

-versus-

Nityananda Pruseth and another ***Opp. Parties***

CORAM:
JUSTICE K.R. MOHAPATRA

ORDER
16.08.2022

Order No.

01. 1. This matter is taken up through hybrid mode.
2. The Petitioner in this CMP seeks to assail the order dated 11th April, 2022 passed by learned Additional Sessions Judge, Kuchinda in F.A.O. No.1 of 2022, whereby an appeal filed under Order XLIII Rule 1(r) C.P.C. was dismissed confirming the order dated 21st February, 2022 passed by learned Civil Judge, (Senior Division), Kuchinda in I.A. No.05 of 2022 (arising out of C.S. No.19 of 2019) directing the parties to maintain status quo over the suit property.
3. Mr. Sahoo, learned counsel for the Petitioner submits that admittedly the property in question is a joint family residential building, which is the subject matter of partition in C.S. No.19 of 2019. During pendency of the suit, the Defendants-Opposite Parties filed an application under Order XXXIX Rules 1 and 2 C.P.C. in I.A. No.5 of 2022, making allegation to the effect that the Plaintiff-Petitioner is making new construction over the suit land. The Plaintiff-Petitioner filed his objection stating that he is residing in the said residential house, which is in a dilapidated

condition and requires immediate repairing. He also stated in his objection that he will not claim equity in the event the property is not allotted to his share. It is his submission that this material aspect was not considered either by learned trial Court or by learned appellate Court while adjudicating the matter. It is also his submission that without repairing the residential house, it is unsafe to reside in the said house, as it may collapse at any moment. In order to protect the property during pendency of the suit, the suit house requires immediate repairing. As such, the interim order of status quo is not sustainable in the eyes of law and is liable to be set aside. The Plaintiff-Petitioner should be permitted to repair the suit house immediately without claiming any equity in doing so.

4. Taking into consideration the submission made by learned counsel for the Petitioner and on perusal of the record, it appears that the suit house is an ancestral property and is the subject matter of partition. The Defendants in their petition under Order XXXIX Rules 1 and 2 C.P.C. in I.A. No. 5 of 2022 have categorically stated that the Plaintiff-Petitioner is making new construction over the suit land. The said allegation has not been specifically denied by the Plaintiff-Petitioner in his objection under Annexure-3. A bald statement is made in the objection to the effect that the Plaintiff-Petitioner is residing in the suit house for the last twenty-two years and it is unsafe to reside in the said house without repairing the same.

5. Learned trial Court as well as learned appellate Court, taking into consideration the materials on record that the

property in question is ancestral residential house, directed the parties to maintain status quo over the same. Law is well settled that the status of the property should not be changed during pendency of the suit. Further, an undertaking not to claim any equity in the event the party defending his action, may not always be acceptable as it may cause loss and prejudice to the adversary, depending upon the facts and circumstances of the case.

6. In the instant case, the Plaintiff-Petitioner has not specifically denied that he is making new construction over the suit property. Learned trial Court as well as learned appellate Court has passed reasoned orders considering the rival contentions of the parties. Hence, I am not inclined to entertain this CMP in exercise of power under Article 227 of the Constitution.

7. Accordingly, this CMP is dismissed.

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

(K.R. Mohapatra)
Judge

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