

IN THE HIGH COURT OF ORISSA AT CUTTACK

CMP NO. 1257 OF 2018

Prana Krushna Das

.....

Petitioner

Mr. N.K. Sahu, Advocate along with
Mr. Bhagyadhar Swain, Advocate

-versus-

Satyabrata Das and others

....

Opp. Parties

Mr. Arun Kumar Mishra, Advocate

CORAM:

JUSTICE K.R. MOHAPATRA

ORDER

01.08.2022

Order No.

11. 1. This matter is taken up through hybrid mode.
2. The Petitioner in this CMP seeks to assail the order dated 23rd July, 2018 passed by learned Civil Judge (Junior Division), Jajpur in T.S. No. 144 of 1995, whereby an application for stay of proceedings of the final decree has been rejected.
3. Mr. Sahu, learned counsel for the Petitioner submits that the Petitioner is the Defendant No.6 in T.S. No. 144 of 1995. The suit for partition was decreed *ex parte* but on compromise. Accordingly, a preliminary decree was drawn up. Subsequently, the Opposite Party Nos.1 and 2, who are subsequent purchasers from the Plaintiff, filed an application to initiate final decree proceeding for allotment of the land in their favour. In the said final decree proceeding, the present Petitioner filed an application stating, inter alia, that he has right, title and interest in respect of the entire property as he has purchased the same from Defendant No.1. Accordingly, he had filed C.S. No. 49 of

2013 for declaration of right, title and interest in his favour, which has been decreed and the matter is pending in RFA No. 7 of 2015 being filed by the present Opp. Party Nos.1 and 2. It is his submission that when right, title and interest have already been declared in favour of the Petitioner in respect of the entire property out of which an area of Ac.0.10 decimals is stated to have been sold to Opposite Party Nos.1 and 2, the final decree proceeding cannot continue. Learned Civil Judge (Junior Division), Jajpur without considering the same and most erroneously holding that the preliminary decree passed in T.S. No.144 of 1995 has not been challenged, rejected such application and appointed a civil court commissioner for measurement and allotment of the land. It is his submission that since the Petitioner is the decree holder in respect of the land in question, no final decree can be drawn allotting the land in faovur of Opposite Party Nos.1 and 2.

4. Mr. Mishra, learned counsel for the Opposite Party Nos.1 and 2, on the other hand, submits that the Opposite Party Nos.1 and 2 are the rightful owners in possession of the land in question having purchased the same from the Plaintiff. As the preliminary decree was not made final, they finding no other alternative have filed an application for initiation of final decree proceeding. The judgment and decree passed in T.S. No. 144 of 1995 has not yet been challenged. Instead of contesting the final decree proceeding, the Petitioner filed a separate suit, i.e. C.S. No. 49 of 2013, for declaration of right, title and interest on the ground that he has purchased the land in question from

Defendant No.1. The present Petitioner was also a party in T.S. No. 144 of 1995. Hence, he could have filed a petition to draw up another preliminary decree without filing a separate suit, so that adjustment could have been made. Without doing so, an independent suit was filed and a decree has been passed, which is under challenge in RFA No. 7 of 2015. He, therefore, submits that there is no impediment in making the decree final passed in T.S. No.144 of 1995 and learned trial Court has directed so. As such, there is no infirmity in the impugned order. Hence, he prays for dismissal of CMP.

5. Taking into consideration the submissions made by learned counsel for the parties and on perusal of record, it appears that the judgment and decree passed in T.S. No.144 of 1995 was never challenged although the present Petitioner was the Defendant No.6 in the said suit. He claimed to have purchased the share of Defendant No.1. On the other hand, the Opposite Party Nos.1 and 2 claim to have purchased the share of the Plaintiff. It also reveals from the record that C.S. No. 49 of 2013 has been filed for declaration of right, title and interest in respect of the property purchased by the present Petitioner from Defendant No.1, which has been decreed. Against the said decree, R.F.A. No.7 of 2015 is pending. Be that as it may, when the preliminary decree passed in T.S. No. 144 of 1995 has not been challenged and the Petitioner though stated to have purchased the land from Defendant No.1 has not prayed for passing any further preliminary decree, I find no impediment on the part of the learned trial Court to proceed with the final decree

proceeding passed in T.S. No. 144 of 1995. Accordingly, the impugned order warrants no interference. Thus, the CMP being devoid of any merit stands dismissed.

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

(K.R. Mohapatra)
Judge

bks

