

IN THE HIGH COURT OF ORISSA AT CUTTACK
CMP No. 663 OF 2022

Manjulata Sahoo *Petitioner*
Mr. Dillip Kumar Mohanty, Advocate

-versus-

Arabinda Nayak and others *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 Petitioner in this CMP seeks to assail the order dated 15th March, 2022 (Annexure-4) passed in F.A.O. No.33 of 2021, whereby learned District Judge, Jagatsinghpur while dismissing the appeal confirmed the order dated 1st September, 2021 under Annexure-2 passed by learned Senior Civil Judge, Jagatsinghpur in I.A. No.189 of 2021 (arising out of C.S. No.281 of 2021) dismissing the application under Order XXXIX Rules 1 and 2 C.P.C. filed by the Petitioner.
3. Mr. Mohanty, learned counsel for the Petitioner submits that C.S. No.281 of 2021 has been filed by the present Petitioner for a decree of permanent injunction. Along with the plaint, a petition under Order XXXIX Rules 1 and 2 C.P.C. in I.A. No.189 of 2021 was filed by the Petitioner to restrain the Opposite Party No.2 from entering upon the suit land and creating any disturbance in the peaceful possession of the Petitioner. Said application was dismissed vide order dated 1st September, 2021 under Annexure-2. Assailing the same, the Petitioner filed F.A.O. No.33 of 2021, which was also dismissed

vide order dated 15th March, 2022 under Annexure-4. Hence, this CMP has been filed.

4. It is submitted by Mr. Mohanty, learned counsel for the Petitioner that the suit land stands recorded in the name of her father, namely, Jogendra Nayak in the consolidation R.O.R. The Opposite Party No.2 claims that her mother, namely, Malati Sahoo, had purchased Lot No.2 of the suit property from the recorded tenant, namely, Jogendra Nayak vide Registered Sale Deed dated 26th August, 1994 and was in possession during her life-time. After her death, the Petitioner is in possession over it exercising right, title and interest thereon. The Plaintiff-Petitioner in the suit has categorically averred in the plaint that the sale deed in question was a sham transaction and it was never acted upon. Further, the Opposite Party No.2 is not the son of said Malati Sahoo. These objections were not properly appreciated by learned trial Court as well as learned Appellate Court while adjudicating of the matter. Both the Courts proceeded on a footing that since Lot No.2 was alienated by the recorded tenants in favour of Malati Sahoo and the Opposite Party No.2 being her son is in possession over the suit land. The impugned orders basing upon such findings are not sustainable. Hence, he prays for setting aside the impugned orders under Annexures-2 and 4 and to remit the matter back to learned trial Court for fresh adjudication of I.A. No.189 of 2021 filed under Order XXXIX Rules 1 and 2 C.P.C..

5. Taking into consideration the submission made by learned counsel for the Petitioner and on perusal of the record, it is apparent that Jogendra Nayak was the recorded tenant in

respect of the land in question. Admittedly, the Registered Sale Deed was executed in favour of Malati Sahoo on 26th August, 1994 by the recorded tenant, namely, Jogendra Nayak. The validity of the sale deed as well as status of Opposite Party No.2 can only be decided in a competent Court of law, if the issue to that effect is raised. The title passed through a Registered Sale Deed in favour of Malati Sahoo cannot be disputed at the stage of entertaining an application under Order XXXIX Rules 1 and 2 C.P.C.. It is presumed to be correct unless and until the registered sale deed in question is proved otherwise. Likewise, the status of Opposite Party No.2 can also be decided by the competent Court of law, if the issue to that effect is raised. Admittedly, the Registered Sale Deed dated 26th August, 1994 executed in favour of Malati Sahoo is in existence.

6. In that view of the matter, the Opposite Party No.2 claiming under the said Registered Sale Deed cannot be said to be stranger to the property, as alleged by the Petitioner. Hence, the contention raised by learned counsel for the Petitioner is not sustainable in the eyes of law. On perusal of the impugned orders under Annexures-2 and 4, this Court finds that the same are well reasoned and are on the basis of materials on record. Hence, I am not inclined to entertain the CMP.

7. Accordingly, the CMP being devoid of any merits stands dismissed.

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

(K.R. Mohapatra)
Judge