

IN THE HIGH COURT OF ORISSA AT CUTTACK

CMP No. 479 OF 2020

Smt. Meena Devi Panch ***Petitioner***
Mr. Jagdish Biswal, Advocate
-versus-
Smt. Bina Shukla and others ***Opp. Parties***

CORAM:
JUSTICE K.R. MOHAPATRA

ORDER
26.07.2022

Order No.

3. 1. This matter is taken up through hybrid mode.
2. The Petitioner in this CMP seeks to assail the order dated 7th January, 2020 (Annexure-5) passed by the learned District Judge, Puri in Civil Revision No.8 of 2017, whereby he confirmed the order dated 8th August, 2017 (Annexure-2) passed by the learned Additional Civil Judge (Senior Division), Puri in C.M.A. No.18 of 2017 (wrongly typed as Civil Revision No.8 of 2017) rejecting an application under Section 151 C.P.C. to recall the judgment and decree passed in Civil Suit No.6/78 of 1990/1986-I.
3. Mr. Biswal, learned counsel for the Petitioner submits that the Plaintiffs-Opposite Parties filed C.S. No.6/78 of 1990/1986-I to recall the judgment and decree dated 26th August, 1992, which was decreed in their favour. Assailing the said judgment and decree passed in C.S. No.6/78 of 1990/1986-I, the Petitioner preferred RFA No.04/80 of 1995/1992, which was allowed. Being aggrieved by the judgment and decree passed in the First Appeal, the Plaintiffs-Opposite Parties preferred R.S.A. No.273 of 1997, which was allowed by setting aside the judgment and decree passed by the First Appellate Court.

4. It is submitted by Mr. Biswal, learned counsel that the Petitioner had also approached the Hon'ble Supreme Court assailing the said judgment and decree passed in R.S.A. No.273 of 1997, which was allowed by remanding the matter back to the Additional District Judge, Puri for fresh adjudication of RFA No. 04/80 of 1995/1992. It is his submission that the appeal filed by the present Petitioner has already been dismissed by learned First Appellate Court. However, during pendency of R.S.A. No.273 of 1997, the Plaintiffs-Opposite Parties filed a counter affidavit in Misc. Case No.438 of 2000 through her son, namely, Ramakanta Shukla, wherein it has been categorically admitted that by virtue of mutual agreement between he and her sister, the vendor of the present Petitioner, they possessed the property separately left by their mother, Golaprani Sharma. Hence, the stand taken by the Plaintiffs-Opposite Parties before learned trial court in the suit is false. Thus, by practicing fraud, the decree has been obtained. Hence, after the remand order of the Hon'ble Supreme Court, the present Petitioner filed an application under Section 151 C.P.C. before learned Additional Senior Civil Judge, Puri to recall the judgment and decree, which was obtained by practicing fraud. It is his case that fraud vitiates the entire proceeding. As such, there can be no limitation in bringing the fraud to the notice to the Court. But, learned Additional Senior Civil Judge, Puri as well as the Revisional Court have committed error of law in holding that the petition under Section 151 C.P.C. was hopelessly barred by limitation. Learned Revisional Court also reiterated the error committed by learned trial Court. He, therefore, submits that the impugned orders under Annexures-2 and 5 are not sustainable in

the eyes of law and the matter may be remitted back to the Additional Senior Civil Judge, Puri for fresh adjudication.

5. Taking into consideration the submission made by learned counsel for the Petitioner, it is apparent that the Petitioner had knowledge of the so called fraud, when the second appeal was pending before this Court. It is fairly conceded by Mr. Biswal, learned counsel for the Petitioner that the plea of fraud was neither raised before this Court in the second appeal or before the Hon'ble Supreme Court. It was also not raised when the matter stated to have been remitted by the Hon'ble Supreme Court to the first appellate Court. Thus, the plea taken by the Petitioner is a sheer after thought. The Petitioner in order to get over the decree passed against her has adopted a novel method, which amounts to abuse of process of Court.

6. It is a fit case where an exemplary cost should be imposed on the Petitioner for abusing of the process of Court and wastage of its judicial time. However, Mr. Biswal, learned counsel for the Petitioner submits that imposition of cost on the Petitioner may impede his carrier. Hence, this Court refrains from imposing cost on the Petitioner and dismissed the CMP with a caution to the Petitioner that she should be very careful in future while pursuing judicial proceedings.

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

(K.R. Mohapatra)
Judge