

IN THE HIGH COURT OF ORISSA AT CUTTACK

CMP No710 of 2022

Umarani Nayak @ Bhuyan and others* *Petitioners

Mr. Ranjit Mohanty, Advocate

-versus-

Gouranga Bhuyan

.... *Opp. Party*

CORAM:

JUSTICE K.R. MOHAPATRA

ORDER

13.10.2022

Order No.

2. 1. This matter is taken up through hybrid mode.
2. 2. Petitioners in this CMP seek to assail the order dated 5th July, 2022 (Annexure-3) passed in FAO No.28 of 2020, whereby learned District Judge, Kendrapara allowing the appeal reversed the order dated 22nd October, 2020 (Annexure-2) passed by learned Civil Judge, Kendrapara in IA No.136 of 2020 (arising out of CS No.146 of 2020).
3. 3. Mr. Mohanty, learned counsel for the Petitioner submits that one Arabinda Bhuyan (husband of Petitioner No.1) filed CS No.146 of 2020 for permanent injunction. Said Arabinda Bhuyan entered into possession of the land in question by virtue of an agreement executed by one Bansidhar Baral. Although the suit land, i.e., Plot No.34 under Khata No.353 to an extent of Ac.0.640 decimal situated in mouza Bhopal Samil Tantiapal (for short, 'the suit land') has been recorded in the name of the Government, but there is note of possession in favour of said Bansidhar Baral in respect of the suit land. Since Opposite Party-Gouranga Bhuyan/Defendant No.1 created disturbance in the possession over the suit land aforesaid suit has been filed.

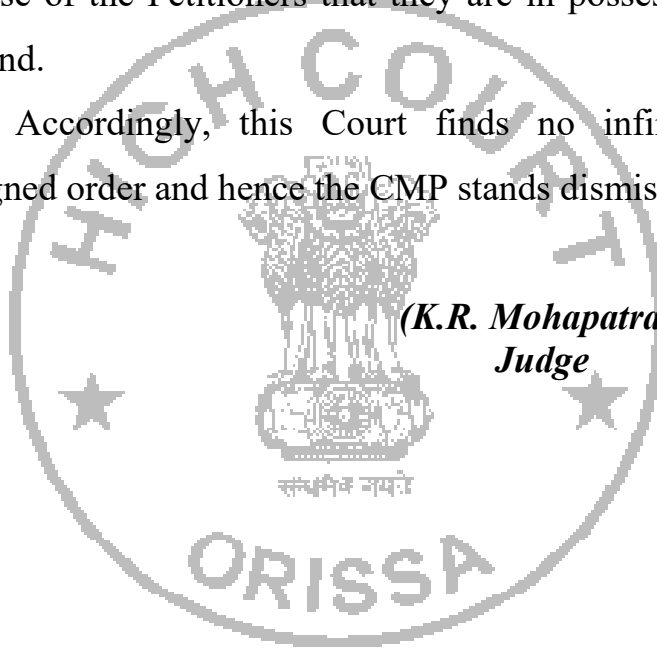
Along with the plaint, Arabinda Bhuyan filed IA No.136 of 2020 under Order XXXIX Rules 1 and 2 CPC. Learned trial Court considering the matter from its proper perspective, vide his order under Annexure-2 directed the parties to maintain status quo over the suit land. Assailing the same, Defendant No.1/Appellant-Gouranga Bhuyan preferred appeal assailing the said order under Annexure-2. During pendency of the appeal, said Arabinda Bhuyan died and was substituted by the present Petitioners. Learned appellate Court, without taking note of the agreement executed by said Bansidhar Baral in respect of husband of Petitioner No.1 and that the Petitioners are in possession over the suit land by virtue of the said agreement, allowed the appeal and vacated the order of status quo. Hence, this CMP has been filed.

4. Upon hearing learned counsel for the Petitioners and on perusal of the record, it appears that although the suit land stands recorded in the name of the State Government, it has not been made parties to the suit. It further appears that the Petitioners claim right over the suit property by virtue of an unregistered agreement stated to have been executed by one Bansidhar Baral, the ROR in respect of the suit land stands in the name of the State Government with an illegal note of possession in favour of said Bansidhar Baral. In support of their case, Petitioners filed two money receipts of the year 2019 as token of purchase of the suit land from said Bansidhar Baral. Learned appellate Court, while considering the matter, took note of the same and observed that the money receipts do not indicate any plot or khata number. The agreement relied upon by the Petitioners also discloses that said Bansidhar Baral had

sold a portion of his stitiban land. Thus, the appellate Court disbelieved the case of the Petitioners and allowed the appeal filed by Defendant No.1/Appellant-Gouranga Bhuyan. Since the documents relied upon by the Petitioners do not relate to the suit land and the un-registered deed relates to the portion of the stitiban land of said Bansidhar Baral, this Court finds that learned appellate Court has committed no error in allowing the appeal and vacating the status order passed by learned trial Court, more particularly when there is no material in support of the case of the Petitioners that they are in possession over the suit land.

5. Accordingly, this Court finds no infirmity in the impugned order and hence the CMP stands dismissed.

(K.R. Mohapatra)
Judge



s.s.satapathy