

IN THE HIGH COURT OF ORISSA AT CUTTACK

CMP No. 777 OF 2022

Prasanna Kumar Khuntia ***Petitioner***

Mr. Pranab Kumar Pasayat, Advocate

-versus-

Khirodbala Beuria and others ***Opp. Parties***

**CORAM:
JUSTICE K.R. MOHAPATRA**

**ORDER
14.10.2022**

Order No.

2.
 1. This matter is taken up through hybrid mode.
 2. The Petitioner in this CMP seeks to assail the order dated 10th May, 2022 (Annexure-6) passed in F.A.O. No.04 of 2021, whereby learned District Judge, Puri while dismissing the appeal confirmed the order dated 4th January, 2021 (Annexure-5) passed by learned Civil Judge, Pipli in I.A. No.34 of 2020 (arising out of C.S. No.27 of 2020) dismissing an application under Order XXXIX Rules 1 and 2 C.P.C.
 3. Mr. Pasayat, learned counsel for the Petitioner submits that originally the suit land belonged to Lord Lingaraj Mahaprabhu being represented through its Marfatdar Sri Udayanath Panda. By virtue of a Registered Sale Deed dated 13th May, 1998, said Udayanath Panda alienated the property in favour of Defendant No.1-Opposite Party No.1. Subsequently, the Petitioner on payment of Rs.15,00,000/- entered into possession over the suit land by virtue of an oral agreement

between the parties with a condition that after obtaining permission from the competent authority, sale deed would be executed in his favour. After taking delivery of possession of the suit land, the Petitioner has invested huge amount and has constructed his residential building thereon. In the rest part of the suit land, he is raising crops and vegetables etc. The Petitioner has also taken power supply in his name. When the Defendant No.1 created disturbance in the peaceful possession of the Plaintiff-Petitioner, he filed the aforesaid suit for permanent injunction restraining the Defendants from alienating the mortgaging Schedule-A property and creating any 3rd party interest over Schedule-B property along with other ancillary and consequential relief. Along with the plaint, the Petitioner filed I.A. No.34 of 2020 under Order XXXIX Rules 1 and 2 C.P.C. to restrain the Defendants from creating any disturbance over the suit property. Said application was rejected vide order dated 4th January, 2021 under Annexure-5. Assailing the same, the Petitioner preferred F.A.O. No.04 of 2021, which was also dismissed vide order dated 10th May, 2022 under Annexure-6. Hence, this CMP has been filed.

4. It is submitted by Mr. Pasayat, learned counsel that the Petitioner satisfies all the three ingredients to get an order of temporary injunction in his favour. Since the Petitioner is in possession over the suit land by virtue of an oral agreement on payment of consideration amount of Rs.15,00,000/- and power supply stands in his name, there is a prima facie case in his favour. Further, the Plaintiff-Petitioner will suffer irreparable

loss, if order of temporary injunction is not granted in his favour. Thus, balance of convenience also lies in favour of the Plaintiff-Petitioner. These material aspects were lost sight of by learned trial Court as well as learned appellate Court. Hence, the impugned orders under Annexures-5 and 6 are not sustainable in the eyes of law and are liable to be set aside.

5. Upon hearing learned counsel for the Petitioner and on perusal of the materials on record, it is apparent that the land stands recorded in the name of Lord Lingaraj Mahaprabhu. Hence, any alienation by Udayanath Panda in favour of Defendants without obtaining permission under Section 19 of the Odisha Hindu Religious and Endowment Act, 1951 is null and void. Further, the Plaintiff-Petitioner claims to be in possession over the suit land, which is seriously disputed by Defendants-Opposite Parties in their objection. Thus, the possession of Plaintiff-Petitioner over the suit land is a matter of trial. It further appears that the true owner of the property, namely, Lord Lingaraj Mahaprabhu, is not made a party either to the suit or to the I.A. As such, the Plaintiff-Petitioner does not have any *prima facie* case in his favour. Since the Petitioner claims to be in possession of the suit land by virtue of an oral agreement, which is seriously disputed by the Defendants-Opposite Parties, balance of convenience also does not lean in his favour. Learned trial Court as well as learned appellate Court discussing the matter in detail held that the Petitioner does not deserve any relief of temporary injunction.

6. In view of the discussion made above, I find no infirmity in the impugned orders under Annexures-5 and 6.

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

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

(K.R. Mohapatra)
Judge

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