

IN THE HIGH COURT OF ORISSA AT CUTTACK

C.M.P. No.436 of 2021

Manju Panigrahy & Ors.

....

Petitioner(s)

Mr.A.P.Bose, Advocate

-versus-

Sabita Panigrahy & Anr.

....

Opposite Party(s)

Mr.G.Mukherji,
Sr.Advocate

**CORAM:
JUSTICE BISWANATH RATH**

**ORDER
07.03.2022**

Order No.

6.

1. Heard learned counsel appearing for the parties.
2. This Civil Miscellaneous Petition involves an application under Article 227 of the Constitution of India involves an order of the appellate authority appears to have been in reversal of an order passed by the trial court in consideration of an application under Order 39, rule 1 & 2 of the Code of Civil Procedure in the pending suit. Taking this Court to the plaint prayer, schedule of property and the limited request involving I.A.No.30 of 2020 further the objection of the present opposite parties in the application under Order 39, rule 1 and 2 of the Code of Civil Procedure, Mr.Bose, learned counsel appearing for the petitioners contended that for the relief involving the application under Order 39, rule 1 & 2 of C.P.C involves 43 cents involving plot no.5/821 khata no.27/541 the injunction application since involved whole patch of land and in the pendency of the suit, the trial court having understood the nature of dispute between the parties declines to grant injunction finally disposing the petition involved. Mr.Bose, learned counsel further contended that the order affecting the petitioner remaining

contrary to the materials as well as the plea of the parties, appeal being preferred, the appeal has come to be closed on participation of both the sides but however with an order of reversal directing the parties to maintain status quo, vide Annexure-1 where the appellate court set aside the order of the trial court in the I.A. No.30 of 2020. It is taking this Court to the plea involving the schedule of property and the prayer in the suit, the prayer involving I.A. No.30 of 2020 and the application I.A. No.30 of 2020 as well as the objection particularly through paragraph nos.2 & 5, Mr.Bose, learned counsel for petitioner urged before this Court that for the findings of the trial court directing for maintenance of status quo, the appellate Court appears to have failed to appreciate such reasoning and arrived at such wrong findings. Mr.Bose, learned counsel for the petitioner thus requested this Court for interfering in the order of the appellate court and thereby passing a just order.

3. Mr. Mukherji, learned Senior Counsel for the Opposite Parties however taking this Court to the plea of the opposite parties in response to the I.A. No.30 of 2020 particularly made in paragraph nos.2 & 4. Reading through the last five line of the paragraph no.5, brought to the notice of this Court that the construction so far it relates to the disputed property is involved hardly involving Ac.0.07 cents. Mr.Mukherji, learned Senior Counsel thus taking this Court to the reasoning of the appellate authority attempted to justify the appellate order.

4. Considering the rival contentions of the parties this Court finds, the prayer of the suit reads as follows:

“It is therefore respectfully prayed that the Honourable court may be pleased to pass:

- i) A preliminary decree declaring that the plaintiff and proforma defendants have share in the suit property 1/15th each.
- ii) Let separate allotment of the plaintiff 1/15th share be prepared through a Civil court Commissioner And deliver the share to the plaintiff and to their defendants.
- iii) To cancel both the Willnamas executed in favour of the defendants and the late Balaji Panigrahi

vide dated 29.12.1999 and 1.12.2000 respectively.

- iv) Final decree be passed accordingly along with the cost and the Court may be pleased to pass such other order(s) as deems fit and proper in the interests of justice.”

5. Reading the I.A.No.30 of 2020 at Anenxure-4 of the brief, this Court finds from the pleading at paragraphs-4 & 5, the prayer and the schedule of property therein appears as follows:

“4 The petitioner submits that the Defendant No.14 and 15/Opp. Party No.1 and 2 are constructing a house over the Petition Schedule house side property since 13.12.2020 and the construction is very soon likely to lay foundation. It is submitted that the construction of a house by the Defendant No.14 and 15/Opp. Party No.1 and 2 while hamper equitable disturbance of the properties of the parties resulting in prolonged litigation and objections in future.

5. The petitioner in view of the submission the petitioner prays that Honourable Court to pass an order restraining the Defendant No.14 and 15/Opp.Party No.1 and 2 from going further construction. In case the Defendant No.14 and 15/Opp.Party No.1 and 2 not restrain irreparable loss and injury to the Petitioner Schedule property and also to other parties of the suit.

SCHEDULE

House site covered by Khata No.27/541 having Plot No.05/218 measuring to an area 0.43 cents situated in Mouza Kanheput under Koraput town and PS in the district of Koraput hounded as follows:”

It is at this stage of the matter, this Court revisiting the plaint finds the property involved in I.A.No.30 of 2020 rests on Schedule-‘B’ (b) of the schedule of properties in the plaint which reads as follows.

“The landed property measuring to an extent of Ac.043 cents, covered under Plot No.5/218 of Khata No.27/541, situated in Mouza-Kanheput, under PO/PS/Tahasil/SR/District-Koraput and bounded as follows:”

6. Taking into consideration the counter filed by the Opposite Parties to I.A.No.30 of 2020 at Annexure-5, this Court finds, through paragraph nos. 4 & 5 the Opposite Parties have following clear case.

“4. The Opp. Parties submits that Opp. Party No.1 is not constructing any house over the schedule property i.e. over property covered by Plot No.5/218 of Kanheiput Mouza. He is neither a necessary nor a proper party to the present Misc. Case.

5. The Opp. Parties submit that the property covered by Plot No.5/218 of Khata No.27/541 of Kanheiput Mouza is the self acquired property of Narsi Panigrahy. ROR stood recorded in the name of Narsi Panigrahy in the revenue records. The said property measured Ac. 0.51 cents. On 01.12.2000, Narsi Panigrahy executed a gift deed for Ac.0.08 cents in favour of Defendant No.7 (Devi Prasad Panigrahy), leaving the balance property measuring to an extent of Ac. 0.43 cents. On the same day Narsi Panigrahy also executed a registered WILL in favour of the Balaji Panigrahy vide document No.4 of 2000 of Sub-Registrar, Koraput. Narsi Panigrahy breathed her last on 24.01.2001. Upon her death basing on the Registered WILL, the property measuring Ac.0.43 cents is duly mutated in the name of Balaji Panigrahy vide M.C. case No. 451/2013 and ROR in favour of Balaji Panigrahy, the petitioner himself had taken active part and had signed in the marginal order sheets also. Thereafter Balaji Panigrahy possessed and enjoyed the property measuring Ac.0.43 cents as its true and rightful owner, to the knowledge of one and all including the petitioner. Balaji Panigrahy on 13.02.2015 to meet his legal necessities and house hold expenditure sold portions measuring Ac.0.07 cents each to the Opp. Party No.2 and Amita Panigrahy for valuable consideration vide sale deed registered as document No.11191500131 of 2015 and 11191500132 of 2015 respectively of Sub-Registrar, Koraput. Thereafter the portions measuring Ac.0.07 cents each were duly recorded in the name of the Opp. Party No.2 and Amita Panigrahy. ROR in favour of Opp. Party No.2 for Ac.0.07 cents was issued vide Khata No.27/1376, plot No.5/218/1130 of Kanheiput Mouza in M.C. case No. 336/2015. Similarly ROR in favour of Amita Panigrahy for Ac.0.07 cents was issued vide Khata No.27/1377, plot No.5/218/1131 of Kanheipt Mouza in M.C. case No.337/2015. Both the Opp. Party No.2 and Amita Panigrahy are in possession of their respective purchased property as its true and rightful owner to the knowledge of one and all including the petitioner. Opp. Party No.2 and

Amita Panigrahy got the classification of their purchased property changed from Dongar-II to Gharabari vide OLR 8(A) Case No.233/17-18 and OLR 8(A) Case No.238/17-18 respectively. Thereafter the Tahasildar, Koraput has issued ROR in favour of the Opp. Party No.2 and Amita Panigrahy for their purchased property i.e. Ac.0.07 cents each only after change of classification. Thereafter the Opp. Party no.2 and Amita Panigrahy have undertaken construction work over their purchased property after obtaining approval from KRIT and at present casting of RCC slab has been completed and the respective houses are on the verge of completion.”

7. Reading the schedule of property involved in the I.A. involved herein further together with the prayer and the schedule involving the I.A. reading together with the plea of the opposite parties in paragraph nos.4 & 5 in their objection, it appears the Opposite Parties have a clear case of construction being undertaken over 0.007 cents of land clearly mentioning that there has been construction up to R.C.C. slab. It is keeping in view the nature of relief in I.A and keeping in mind the objection of the Opposite Parties coming forward disclosing the development over the disputed property to the particular extent and particular level, for the opinion of this court while considering the petition for injunction the plea of the Opposite parties with regard to their construction to the limited extent should have been weighed in the mind of Court. It is at this stage of the matter considering the rival contentions and looking to the observations and finding in the appeal order, this Court finds, there has been mechanical consideration of the appeal without advertting to the plea and the counter plea of both the parties when particular opposite party comes forward to volunteer that it is engaged with construction over some portion of land to the extent 0.07 cents of land. There was no occasion in taking away the trial court order in total. It is keeping this in view this Court interfering in the appeal order observes, there shall be status quo as on date in respect of the disputed land to be maintained by both the parties except 0.07 cents over which the opposite parties have already undertaken the construction up to roof level. Further since there has been progress to a

great extent by the Opposite parties herein, the appellant in the court below, this Court also observes, this order will operate subject to the present opposite parties file an affidavit in the trial court undertaking that they shall have no claim of equity on investment made in the meantime and in the event there is ultimate loss to such parties in the suit. This Court also observes that observation made hereinabove are for the purpose of injunction and nothing to do in the ultimate trial of the suit which is to be decided in accordance with law.

8. With the observation and direction made herein above, the C.M.P. stands disposed of.



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