

IN THE HIGH COURT OF ORISSA AT CUTTACK
CMP No. 795 OF 2022

Sri Narsingh Behera ***Petitioner***
Mr. Bhawani Sankar Panigrahi, Advocate
-versus-
Sadananda Behera and others ***Opp. Parties***

CORAM:
JUSTICE K.R. MOHAPATRA

ORDER
22.09.2022

Order No.

01. 1. This matter is taken up through hybrid mode.
2. The Petitioner in this CMP seeks to assail the order dated 29th April, 2022 (Annexure-7) passed in C.M.A. No.22 of 2021 whereby learned District Judge, Ganjam dismissed the application filed for setting aside the order dated 17th May, 2019 passed in C.M.A. Nos.40 and 41 of 2012 by the said Court.
3. Mr. Panigrahi, learned counsel submits that the mother of the Petitioner, namely, Smt. Subhanga Behera, had filed T.S. No.68 of 1997 for a declaration that the sale deed No.2305 dated 10th June, 1997 is illegal and void and not acted upon and for a further declaration that the Plaintiff is the absolute owner of the suit property. She also prayed for other consequential relief. The suit was dismissed vide judgment and decree dated 27th September, 2003 and 29th October, 2003 respectively passed by learned Civil Judge (Junior Division), Chatrapur. Assailing the same, said Smt. Subhanga Behera preferred R.F.A. No.74 of 2003. But, unfortunately the R.F.A. was dismissed for default

on 17th August, 2007. Immediately thereafter, said Smt. Subhanga Behera filed C.M.A. No.62 of 2007 under Order XLI Rule 19 C.P.C. for readmission of the appeal. During pendency of said C.M.A, said Smt. Subhanga Behera died on 9th December, 2008. The Petitioner being the adopted son of said Smt. Subhanga Behera could not know about the dismissal of the appeal as well as C.M.A. as said Smt. Subhanga Behera was looking after the case personally by engaging Advocate and the Petitioner was in his place of posting. In the year, 2012, when the Petitioner visited to his native place at Chatrapur, he came to know about the filing of the cases and their fate. Accordingly, he filed C.M.A. No.40 of 2012 to restore the appeal along with a petition for condonation of delay in C.M.A. No.41 of 2012. The aforesaid C.M.As were dismissed on 17th May, 2019 on merit holding that there is no sufficient ground to condone the delay. But the Petitioner could not know about the fate of the C.M.As as his Advocate did not intimate about the same. However, when he came to know about the fate of aforesaid CMAs, he filed C.M.A. No.22 of 2021 to recall the order dated 17th May, 2019 along with C.M.A. No.23 of 2021 for condonation of delay in filing the C.M.A. No.22 of 2021. Said applications were dismissed vide order dated 29th April, 2022. Hence, the CMP has been filed.

4. It is submitted by learned counsel for the Petitioner that the previous counsel engaged by the Petitioner did not intimate about the fate of the C.M.A Nos.40 and 41 of 2012. In the meantime, the son of the Petitioner died and his wife became

mentally unstable. The Petitioner is also suffering from high Blood Pressure and Diabetes. Thus, he could not take appropriate steps within the stipulated time to assail the order passed in C.M.A. Nos.40 and 41 of 2012. After engaging his present counsel, the Petitioner could know about the fate of the aforesaid C.M.As and filed C.M.A. Nos.22 and 23 of 2021. Learned District Judge without appreciating the same, dismissed the petitions holding that the same are not maintainable as the Petitioner had not challenged the impugned order dated 17th May, 2019 passed in C.M.A. Nos.40 and 41 of 2012 before any higher forum.

5. Mr. Panigrahi, learned counsel for the Petitioner submits that the petition for recall of the order dated 17th May, 2019 was misconceived. Hence, relief sought for in this CMP may be confined to the order passed in C.M.A. Nos.40 and 41 of 2012. It is his submission that the deed in question was obtained by fraud. Hence, the Petitioner has a prima facie case to contest the appeal. If he is not given opportunity to contest the appeal on merit, he will lose his only residential house over the suit land and will be homeless. Learned District Judge while considering the matter ought to have taken the same into consideration. Hence, he prays for setting aside the order dated 17th May, 2019 and to restore the R.F.A. No.74 of 2003 to file and hear on merit.

6. Heard Mr. Panigrahi, learned counsel for the Petitioner at length. Perused the materials on record.

7. Considering the materials on record, learned District Judge vide his order dated 17th May, 2019 refused to condone

the delay in filing the C.M.A No.40 of 2012. The said order remained unassailed. The ground taken in C.M.A. No.41 of 2021 for condonation of delay was that since the mother of the Petitioner, namely, Smt. Subhanga Behera was looking after the case personally, the Petitioner could not know about the pendency or outcome of R.F.A. No.74 of 2003 filed by her mother as well as dismissal of CMA. After death of his mother, the Petitioner visited his village in the year, 2012 and came to know about the dismissal of R.F.A. No.74 of 2003 as well as CMA. Although the appeal was dismissed on 17th August, 2007 and C.M.A. was dismissed for default on 6th October, 2009, restoration of the C.M.A. No.62 of 2007 was filed in the year 2012 on the aforesaid grounds, which are apparently not sufficient as held by learned District Judge and the C.M.A. Nos.40 and 41 of 2012 were dismissed on 17th May, 2019. The said order remained unassailed till 2021 when C.M.A. Nos.22 and 23 of 2021 were filed i.e. on 15th September, 2021. CMA Nos.22 and 23 of 2021 are not maintainable in law when C.M.A. Nos.40 and 41 of 2012 were dismissed on merit. No reason whatsoever has been assigned by the Petitioner in this CMP to condone the delay of more than three years in filing the CMP in challenging the order dated 17th May, 2019. Even if the grounds taken for condonation of delay in filing the C.M.A. No.22 of 2021 are taken into consideration, the same are not sufficient to condone an inordinate delay, more particularly, when R.F.A. No.73 of 2003 was dismissed in the year, 2007 during lifetime of the mother of the Petitioner. She had, in fact, taken steps for

readmission of the appeal, which was dismissed for default. It further appears that the Petitioner is thoroughly negligent in pursuing the litigation even after he allegedly came to know about dismissal of R.F.A as well as CMA. Since learned District Judge, Ganjam, Chatrapur considering the materials on record has passed a reasoned order refusing to recall of the order passed in CMA No.62 of 2007 and thereby dismissed the C.M.A Nos.40 and 41 of 2012, I am not inclined to entertain this CMP.

8. Accordingly, the CMP stands dismissed.

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

(K.R. Mohapatra)
Judge

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