

IN THE HIGH COURT OF ORISSA AT CUTTACK

C.M.P. No.1127 of 2019

Rama Chandra Nayak

....

Petitioner(s)

Mr. M. Mishra,
Sr. Advocate being assisted by
Mr. S. Das,
Advocate

-versus-

Jadu Danda & Ors.

....

Opposite Party(s)

Miss P. Naidu,
Advocate for O.P.1

**CORAM:
JUSTICE BISWANATH RATH**

**ORDER
19.05.2022**

Order No.

08.

1. This C.M.P. involves rejection of an application for addition of a 3rd party to the appeal proceeding vide R.F.A. No.02 of 2019 pending on the file of learned District Judge, Ganjam.

Rejection of such application gave rise to initiate the present C.M.P.

2. Mr. Mishra, learned Senior Advocate appearing on behalf of the Petitioner though admitted that the 3rd party being a *lis pendens* purchaser has undisputedly stepped into the shoe of the vendor, but however, for the interim order since involves interference in the property by the 3rd party, Mr. Mishra, learned Senior Advocate contended that there is necessity of inclusion of such party; may be for injunction purpose.

It is, in the above premises, Mr. Mishra, learned Senior Advocate contended that there has been no proper application of

mind by the lower appellate court resulting illegal rejection of the application involved.

3. In her opposition Miss Naidu, learned counsel for the Opposite Party No.1 submitted that since there is no relief against the 3rd party in the suit so also no pleadings involving such party, the 3rd party knowing fully well was not made as a party and for no contest involving him, there is no necessity of bringing such party to the fold of the appeal. There is, however, no dispute to the legal position that the *lis pendent* purchaser is to follow the vendor's fate. However, there is also no denial to the contest with such party involving the application involved herein and that the order of status quo may not bind such party, unless such party is brought to the case proceeding.

4. Considering the rival contentions of the parties, this Court finds, ultimately the order of status quo confines to the parties already appeared in disposal of the application in the meantime. It appears, there has been allegation that the 3rd party being a *lis pendent* purchaser is attempting to change the nature and character of the property. For the opinion of this Court, unless the 3rd party is brought to the case proceeding at least in the process of consideration of the I.A., there will be no order governing such parties.

5. In the circumstance, this Court finds, there is no proper application of mind in considering the application by the lower appellate court. In the process and as there is necessity of inclusion of such party at least for the purpose of injunction, this Court allowing the application for bringing the new party as Respondent nos.21 & 22, also directs the Appellants to file amended cause title in the memorandum of appeal at least within a period of seven

working days. Upon bringing the amended cause title, the lower appellate court shall issue notice to such parties in appeal so also involving him in interlocutory matters. Since this C.M.P. does not involve rejection of the amendment, in the event there is just requirement of new pleadings, it shall be open to the Petitioner to file a fresh C.M.P.

6. The C.M.P. stands disposed of with the above direction.

(Biswanath Rath)
Judge

Ayaskanta Jena

