

IN THE HIGH COURT OF ORISSA AT CUTTACK

CMP NO. 856 OF 2022

Gadadhar Sandha

....

Petitioner

Mr. Asutosh Sahoo, Advocate

-versus-

Parbati Sandha and others

....

Opp. Parties

Mr. P.K. Das, Advocate
(For Opp. Party No.2)

CORAM:

JUSTICE K.R. MOHAPATRA

ORDER

21.10.2022

Order No.

1. This matter is taken up through hybrid mode.
2. The Petitioner in this CMP seeks to assail the order dated 13th July, 2022 (Annexure-4) passed by learned Additional Senior Civil Judge, Dhenkanal in C.S. No. 159 of 2017 (F.D.), whereby an application filed by the Petitioner to alienate only Ac.0.008 decimals of land out Plot No. 176 under Khata No. 2707 situated in Dhenkanal Town has been rejected.
3. Mr. Sahoo, learned counsel for the Petitioner submits that the wife of Petitioner is suffering from cancer and the Petitioner does not have sufficient means to meet with the expenses of treatment of his wife. The Petitioner has been allotted with 1/8 share in schedule 'A' property. Since the Petitioner is in possession over the land, he prays for alienation of the said land only to meet the expenses of treatment of his wife. Said petition was rejected on the ground that it may lead to multiplicity of litigation. He further submits that although the Opposite Party Nos. 1 to 5 have filed their objection, but they have

never disputed the possession of the Petitioner over the land he wants to alienate. Further, they did not contest the petition for which they were set ex parte. No other Defendants have filed any objection to the same. Thus, it appears that Defendant Nos.1 to 5 have no objection to the prayer for alienation made by the Petitioner. This aspect was lost sight of by learned trial Court while adjudicating the matter. Hence, he prays for setting aside the impugned order under Annexure-4 and to grant leave to the Petitioner to alienate the aforesaid property.

4. Mr. Sahoo, learned counsel for the Petitioner also relies upon the decision in the case of **Vinod Seth –v- Devinder Bajaj and others**, reported in (2010) 8 SCC 1, wherein it has been held at paragraph-21 as under:

“21. The principle underlying section 52 of TP Act is based on justice and equity. The operation of the bar under section 52 is however subject to the power of the court to exempt the suit property from the operation of section 52 subject to such conditions it may impose. That means that the court in which the suit is pending, has the power, in appropriate cases, to permit a party to transfer the property which is the subject-matter of the suit without being subjected to the rights of any part to the suit, by imposing such terms as it deems fit. Having regard to the facts and circumstances, we are of the view that this is a fit case where the suit property should be exempted from the operation of Section 52 of the TP Act, subject to a condition relating to reasonable security, so that the defendants will have the liberty to deal with the property in any manner they may deem fit, in spite of the pendency of the suit. The appellant-plaintiff has alleged that he is a builder and real estate dealer. It is admitted by him that he has entered into the transaction as a commercial collaboration agreement for business benefits. The appellant has further stated in the plaint, that under the collaboration agreement, he is required to invest Rs. 20 lakhs in all, made up of Rs.16,29,000/- for

construction and Rs.3,71,000/- as cash consideration and that in lieu of it he will be entitled to ground floor of the new building to be constructed by him at his own cost. Treating it as a business venture, a reasonable profit from such a venture can be taken as 15% of the investment proposed, which works out to Rs.3 lakhs. Therefore it would be sufficient to direct the respondents to furnish security for a sum of Rs. 3 lakhs to the satisfaction of the court (learned Single Judge) as a condition for permitting the defendants to deal with the property during the pendency of the suit, under Section 52 of the TP Act.”

5. Mr. P.K. Das, learned counsel for the Opposite Party No.2 vehemently objects to the same and submits that pursuant to the direction of this Court, the Petitioner has submitted the trace map of land he wants to alienate and it is just in the middle of Plot No.176 bifurcating the same. If the prayer made by the Petitioner is accepted, there will be difficulty in allotting the share to the co-sharers pursuant to the preliminary decree. He further submits that the land, Petitioner seeks to alienate, is a valuable property situated in Dhenkna Town. There are other properties, which the Petitioner may seek permission for alienation. Application for grant of permission to alienate the property has been filed to frustrate the final decree. He further submits that the Opposite Party No.2 is not in a position to purchase the said property as his financial condition is not good. The Opposite Party No.2 had, in fact, applied for alienation of property, but his application has been rejected. Hence, learned trial Court has rightly dismissed the petition.

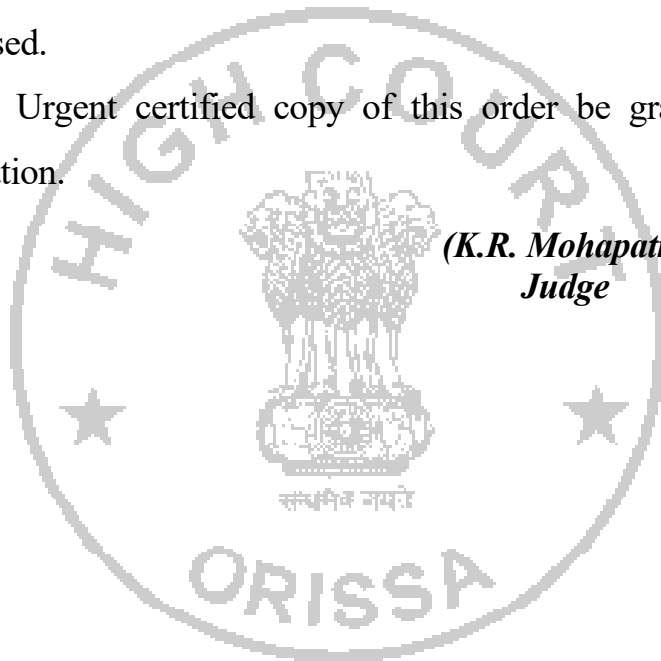
6. Taking into consideration the rival contentions of the parties and on perusal of the record, more particularly the affidavit filed by the Petitioner along with trace map of the land, he wants to alienate, this Court finds that the same bifurcates the Plot No.176 in two parts.

Thus, the contention of Mr. Das, learned counsel for the Opposite Party No.2 appears to be correct as it may cause difficulty in allotting the share to the co-sharers as per the preliminary decree. Further, it may lead multiplicity of litigation, if the Petitioner is permitted to alienate the property as the same is situated in Dhenkanal Town. As such, learned trial Court has committed no error in dismissing the petition for grant leave to the Petitioner for alienation of the property, as aforesaid.

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

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

bks



(K.R. Mohapatra)
Judge