

IN THE HIGH COURT OF ORISSA AT CUTTACK

CMP No. 863 OF 2022

Sunita Bagai

.... Petitioner

Mr. Amit Prasad Bose, Advocate

-versus-

Subhendra Kumar Behera

.... Opp. Party

CORAM:

JUSTICE K.R. MOHAPATRA

ORDER

16.09.2022

Order No.

01. 1. This matter is taken up through hybrid mode.
2. The Petitioner in this CMP seeks to assail the order dated 26th July, 2022 (Annexure-1) passed by learned Special Judge, C.B.I. Court No.1-cum-Additional District Judge, Bhubaneswar in F.A.O. No.29 of 2019, whereby he allowed the appeal in part by modifying the order dated 26th February, 2019 (Annexure-2) passed by learned 1st Additional Civil Judge (Senior Division), Bhubaneswar in I.A. No.01 of 2018 (arising out of C.S. No.303 of 2018) to the extent that *“the status quo over the suit land be maintained by both the parties except under construction house along with the toilet and staircase up to roof level/lintel level with a condition that the Defendant-Appellant shall abide by final decision of the suit and shall not claim equity.”*
3. Mr. Bose, learned counsel submits that the Petitioner has filed a suit for declaration of her right, title, interest and confirmation of possession as well as recovery of possession by a decree of permanent injunction stating, *inter alia*, that the suit

land was originally recorded in the name of Naba Kishore Patra, son of Birabar Patra. Said Naba Kishore Patra, while in possession over the suit property, executed a general Power of Attorney in favour of Samadhan Estate Pvt. Ltd for development of the suit land and creation of 3rd party interest. Accordingly, the Plaintiff-Petitioner by virtue of a registered sale deed dated 14th December, 1998 purchased the suit property and possession was delivered to her. After purchase, the Plaintiff-Petitioner bounded the same. However, she could not take any step to mutate the land in her name. On 17th February, 2018, when she went to the suit land, it was found that the Defendant-Opposite Party by engaging some labourers has started construction over the suit land. Hence, the suit has been for the aforesaid relief. Along with the plaint, she also filed a petition under Order XXXIX Rules 1 and 2 C.P.C. in I.A. No.01 of 2018. Learned trial Court vide its order dated 26th February, 2019 directed the parties to maintain status quo. Assailing the same, the Defendant-Opposite Party preferred F.A.O. No.29 of 2019 stating that he had purchased the suit property from the recorded tenant on 4th April, 2008 and mutated the land in his name. After mutation, he started construction of house over the suit land by obtaining permission from the B.D.A. It is his submission that during pendency of the interim application, a Pleader Commissioner was deputed under Order XXXIX Rule 7 C.P.C., who submitted a report stating that the house has been constructed up to roof level. But, in his cross-examination, the Commissioner has specifically stated that in total, four pillars

have been constructed over the suit land independently without any wall. Out of them, no concrete has been put on the pillars (iron structure). There is no concrete laid on such iron structure. Thus, it clearly shows that the construction has not been made up to roof level as reported by the Commissioner. However, learned appellate Court by misreading the report of the Commissioner passed the impugned order directing as above. Hence, the impugned order is not sustainable in the eyes of law and is liable to be set aside.

4. Upon hearing learned counsel for the Petitioner and on perusal of the record, it appears from the Commissioner's report that the house has been constructed up to roof level but in addition there are four independent pillars in which concrete has not been laid as yet. From the above, it cannot be concluded that the house has not been constructed up to roof level as observed by learned appellate Court. It only suggests that at some portions of the house under construction, it has not come up to roof level. But from the report of Commissioner, it appears that substantial construction of the house is already made up to roof level. As such, order of injunction to restrain the Opposite Party from making further construction will enure to the benefit of none. Thus, I find no infirmity in the impugned order under Annexure-1.

5. In view of the above, this Court while disposing of the CMP by confirming the order under Annexure-1, directs that the Defendant-Opposite Party shall also file an undertaking to the effect that he shall not claim any equity on the construction over

the suit property and shall demolish the same at his own cost, if occasion so arises.

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

(K.R. Mohapatra)
Judge

ms

