

IN THE HIGH COURT OF ORISSA AT CUTTACK

CMP No.896 of 2022

Dayanidhi Panigrahi

.....

Petitioner

Mr. Vivekanand Jena, Advocate

-versus-

Narendra Prasad Barik and another

....

Opp. Parties

CORAM:

JUSTICE K.R. MOHAPATRA

ORDER

21.09.2022

Order No.

1. This is an application for amendment of the CMP.
2. Petitioner in this CMP seeks to assail the order dated 23rd July, 2022 (Annexure-4) passed in FAO No.58 of 2021, whereby learned District Judge, Balasore dismissed the appeal and confirmed the order dated 7th October, 2021 passed by learned Civil Judge (Senior Division), Soro in IA No.120 of 2021 (arising out of CS No.275/238 of 2021 dismissing an application under Order XXXIX Rules 1 and 2 CPC.
3. Mr. Jena, learned counsel for the Petitioner submits that the Petitioner as Plaintiff filed CS No.275/238 of 2021 for a specific performance of contract. It is his submission that Defendants/Opposite Parties being the true owners entered into an agreement with the Petitioner for alienation of the suit property. The Petitioner has already paid substantial consideration money of Rs.2.60 lakhs to Opposite Party No.2. Since the Opposite Parties did not come up to execute the sale deed in terms of the agreement, the Plaintiff/Petitioner is

constrained to file the aforesaid suit. Since the Opposite Parties contemplated to alienate the suit property during pendency of the suit, an application under Order XXXIX Rules 1 and 2 CPC in IA No.120 of 2021 was filed. Learned Trial Court rejected the said petition vide order dated 7th October, 2021 holding that no injunction order can be passed against the true owner. Petitioner assailing the same filed appeal in FAO No.58 of 2021 under Order XLIII rule 1(r) CPC, which has also been dismissed vide impugned order under Annexure-4 holding that the Opposite Parties are admittedly in possession over the suit land and the Petitioner neither has any prima facie case nor balance of convenience leans in his favour. It is his submission that if the Opposite Parties alienate the suit property in the meantime there is every likelihood of multiplicity of litigation and the Petitioner would be seriously prejudiced. Hence, he prays for setting aside of the impugned order under Annexure-4.

4. Upon hearing learned counsel for the Petitioner and on perusal of record, it appears that the land in question stands recorded in the names of Opposite Parties. It is not in dispute that they are in possession over the suit land. Petitioner claims alienation of the suit property in his favour on the basis of an agreement entered into between him and the Opposite Parties. On perusal of the impugned order under Annexure-4, it appears that learned Appellate Court relying upon different case laws has come to the conclusion that the Petitioner does not have a prima facie case and balance of convenience also does not lean in his favour. Law is well-settled that true owner cannot be

injuncted from dealing with his property independently. Thus, I find no infirmity in the impugned order under Annexure-4.

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

(K.R. Mohapatra)
Judge



s.s.satapathy