

IN THE HIGH COURT OF ORISSA AT CUTTACK

CMP NO. 906 OF 2022

Pradyumna Kumar Satapathy @ ***Petitioners***
Satpathy and others

Mr. S.K. Samantaray, Advocate

-versus-

Kshyamanidhi Satpathy and others ***Opp. Parties***

CORAM:

JUSTICE K.R. MOHAPATRA

ORDER

26.09.2022

Order No.

1. This matter is taken up through hybrid mode.
2. The Petitioner in this CMP seeks to assail the order dated 20th August, 2022 (Annexure-8) passed by learned 2nd Additional District Judge, Bolangir in FAO No.31/05/10 of 2008-09-15/FAO No. 35 of 2014, whereby he reversed the order dated 23rd September, 2008 passed by learned Civil Judge (Senior Division), Bolangir in M.J.C. No.30 of 2002 (arising out of T.S. No.28 of 2002).
3. Mr. Samantaray, learned counsel for the Petitioner submits that earlier T.S. No. 74 of 1998 was filed by the Plaintiff-Petitioner for declaration of right, title and interest over the suit land and for other consequential relief. During pendency of the suit, interim order of injunction was operating in favour of the Petitioner. Subsequently, the plaint was returned to be presented before the competent civil court and accordingly, on presentation, the suit was renumbered as T.S. No.28 of 2002. In the said suit, the Plaintiff-Petitioner filed M.J.C. No.30 of 2002 under Order XXXIX Rules 1 and 2 C.P.C. and an *ex parte* ad interim order of injunction was passed on 9th

April, 2002. Subsequently, said ad interim order of injunction was made absolute on 23rd September, 2008, which was assailed in the present appeal. Although it is specifically averred in M.J.C. No. 30 of 2002 that in addition to construction of house over Plot No.615, the Opposite Parties are contemplating to make further construction over vacant site of the suit land. Learned appellate Court without considering the same reversed the order of injunction. Resultantly, while completing the construction of house, the Defendants are attempting to make further construction over the vacant site which would completely close the passage of the Plaintiffs. Hence, the impugned order is not sustainable in law and is liable to be set aside.

4. Taking into consideration the submission made by learned counsel for the Petitioner and the observation made by learned 2nd Additional District Judge, Bolangir while passing the impugned order under Annexure-8, this Court is of the considered opinion that learned appellate Court has committed no error in allowing the Defendants-Opposite Parties to complete the construction of residential house, which has been proceeded substantially. But, if any new construction is contemplated/made by the Defendants over the vacant site, the Plaintiffs-Petitioners are at liberty to move learned trial Court for appropriate direction in that regard.

5. Accordingly, the CMP is disposed of.

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

(K.R. Mohapatra)
Judges