

IN THE HIGH COURT OF ORISSA AT CUTTACK

CMP No. 1231 OF 2019

Kailash Agarwal and another* *Petitioners

Mr. Amit Prasad Bose, Advocate

-versus-

Rama Krushna Mishra and others* *Opp. Parties

Mr. Satyanarayan Mohapatra, Advocate

CORAM:

JUSTICE K.R. MOHAPATRA

ORDER

06.09.2022

Order No.

CMP No. 1231 of 2019
& I.A. No. 699 of 2022

- 5.
1. This matter is taken up through hybrid mode.
 2. Although I.A. No. 699 of 2022 is listed for extension of the interim order dated 15th November, 2019 passed in I.A. No.1296 of 2019, but on consent of learned counsel for the parties, the CMP is taken up for final disposal.
 3. The Petitioners in this CMP seek to assail the order dated 15th October, 2019 (Annexure-1) passed by learned Civil Judge, (Senior Division), Bargarh in C.S. No.191 of 2017, whereby he rejected an application filed by the Defendants-Petitioners under Section 10 C.P.C. refusing to stay further proceeding of the suit during pendency of W.P.(C) No.25064 of 2017 before this Court.
 4. Mr. Bose, learned counsel for the Petitioners submits that C.S. No.191 of 2017 has been filed by the Plaintiffs-Opposite Parties for declaration of right, title and interest, eviction of Defendants-Petitioners as well as permanent

injunction. It is his submission that the suit land was finally recorded in the name of father of the Opposite Parties, namely, late Jagabandhu Mishra in the consolidation proceeding. Assailing publication of final R.O.R. in the name of Jagabandhu Mishra, the Petitioners filed Consolidation Revision Case No.314 of 2012 before the Additional Commissioner, Settlement and Consolidation, Sambalpur, which was dismissed vide order dated 12th January, 2015. Being aggrieved by the said order, the Petitioners filed W.P.(C) No.25064 of 2017, which is sub-judice before this Court. It is also submitted that an interim order has been passed in the said writ petition directing the parties to maintain status quo over the land in question. In the interregnum, the Plaintiffs-Opposite Parties alleging that the Defendants-Petitioners have constructed a boundary wall by encroaching upon the land recorded in the name of their father, filed C.S. No.191 of 2017 seeking for the aforesaid relief. During pendency of the suit, the Petitioners being the Defendants filed an application under Section 10 C.P.C. to stay further proceeding of the suit during pendency of W.P.(C) No.25064 of 2017. Said application was dismissed on a flimsy ground observing that since the suit has not come up to the hearing stage, leading evidence will not be affected by pendency of the writ petition. No harm will be caused to the parties, if they adduce their respective evidence. Accordingly, learned trial Court refused to entertain the prayer made in the petition under Section 10 C.P.C.. Hence, this writ petition has been filed assailing the same.

5. It is further contended by learned counsel for the Petitioners that although the land in question has been recorded in the name of father of the Opposite Parties, namely, late Jagabandhu Mishra in the consolidation R.O.R., but, the Opposite Parties being not sure about their title over the land in question the Opposite Parties filed the suit for declaration of right, title and interest as well as for consequential relief. The consequential relief of eviction and permanent injunction depend upon declaration of right, title and interest of the Plaintiffs-Opposite Parties in the suit. Further correctness of R.O.R. published in the name of Jagabandhu Mishra is sub-judice before this Court in W.P.(C) No.25064 of 2017. Hence, the prayer for declaration of right, title and interest cannot be granted in favour of Plaintiffs-Opposite Parties during pendency of the aforesaid writ petition. He, therefore, submits that learned trial Court has committed error of law in dismissing the petition under Section 10 C.P.C.. He, therefore, prays for setting aside the impugned order and to stay further proceeding of C.S. No.191 of 2017 during pendency of W.P.(C) No.25064 of 2017.

6. Referring to the objection annexed to the CMP as Annexure-5, Mr. Mohapatra, learned counsel for the Opposite Parties submits that the land in question stood recorded in the name of the father of the Plaintiffs-Opposite Parties since 1996. Notification under Section 41 of the Odisha Consolidation of Holdings and Prevention of Fragmentation of Land Act, 1972 (for short 'the Act') has already been made before filing of the suit. Further, the land in question is a non-consolidable land.

Section 51 or 4(4) of the Act does not bar a suit for injunction during continuance of the consolidation proceeding. In that view of the matter, relief for eviction and permanent injunction can be entertained during pendency of the aforesaid writ petition. He, however, submits that he has no instruction as to whether any interim order has been passed in the writ application or not. In the impugned order, learned trial Court in order to avoid delay in disposal of the suit has directed the parties to adduce evidence in the matter. As such, adducing evidence in the suit by the respective parties will prejudice none. Hence, the impugned order warrants no interference.

7. Taking into consideration the rival contentions of the parties, this Court finds that the writ petition (W.P.(C) No.25064 of 2017) is pending against the order of revisional Court dismissing the revision filed by the present Petitioners challenging the R.O.R. published in the name of Jagabandhu Mishra, the father of the Opposite Parties. It is trite law that during pendency of the consolidation proceeding, the suit for permanent injunction is maintainable. Thus, a suit for eviction and injunction is maintainable during pendency of the writ petition. The Consolidation Authorities have finally upheld the R.O.R. published in the name of Jagabandhu Mishra, farther of the Opposite Parties. The, relief with regard to declaration of right, title and interest may be subject to adjudication of W.P.(C) No.25064 of 2017. But the Opposite Parties can still maintain the suit for eviction and permanent injunction, when the consolidation R.O.R. stands recorded in the name of their father, which is of course, subject to any interim order passed

in the said writ petition. On perusal of the impugned order, it appears that learned trial Court has only observed that pendency of the writ petition will not prejudice the parties to record evidence in the suit.

8. In that view of the matter, I find no infirmity in the impugned order under Annexure-1.

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

10. The interim order dated 15th November, 2019 passed in I.A. No.1296 of 2019 stands vacated.

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

(K.R. Mohapatra)
Judge

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