

IN THE HIGH COURT OF ORISSA AT CUTTACK
CMP No. 919 OF 2022

Sailendra Singh ***Petitioner***

Mr. Bibekananda Bhuyan, Advocate

-versus-

Prakash Nayak ***Opp. Party***

Mr. Amit Prasad Bose, Advocate

CORAM:
JUSTICE K.R. MOHAPATRA

ORDER
16.12.2022

Order No.

6. 1. This matter is taken up through hybrid mode.
2. The Petitioner in this CMP seeks to assail the order dated 30th July, 2022 (Annexure-6) passed by learned Additional District Judge, Kujang in F.A.O. No.19 of 2022, whereby allowing the appeal, order dated 21st May, 2022 (Annexure-5) passed by learned Senior Civil Judge, Kujang in I.A. No.97 of 2022 (arising out of C.S. No.125 of 2020) has been upheld rejecting an application under Order XXXIX Rules 1 and 2 C.P.C. filed by the Petitioner.
3. Mr. Bhuyan, learned counsel for the Petitioner submits that the suit property stood recorded in the name of Kabindra Singh. He died leaving behind his mother, widow and three minor children. When the matter stood thus, the widow of the recorded tenant, namely, Punam Devi alienated the entire property in favour of Sayed Jamil Akhtar-Defendant No.6, who alienated the property to Prakash Nayak-Opposite Party. It is his submission that brother of the recorded tenant, namely, Sailendra Singh filed suit for partition in C.S. No.125 of 2020 claiming that the property in question was purchased in the name of said

Kabindra Singh from joint family nucleus. When the suit was sub-judice and an order of *status quo* passed in I.A. No.105 of 2020 was continuing, the aforesaid alienations had taken place. Hence, the Petitioner by impleading the last purchaser, namely, Prakash Nayak-Opposite Party filed I.A. No.97 of 2022 under Order XXXIX Rules 1 and 2 C.P.C. Learned trial Court observing that the property in question has already been mutated in the name of Opposite Party and he is a *bona fide* purchaser for value, dismissed I.A. No.97 of 2022. Assailing the same, the Petitioner filed F.A.O. No.19 of 2022 and learned appellate Court reiterating the findings and observing that there is a remedy for the Petitioner to file an application under Order XXXIX Rules 2-A C.P.C., confirmed the said order. Hence, this CMP has been filed.

4. In course of hearing, Mr. Bose, learned counsel by filing an affidavit of the Opposite Party along with some photographs submits that the issue involved in this CMP has become academic, as the Opposite Party has already made construction by availing the loan from the bank and is residing there. He has also constructed some shop rooms to earn his livelihood and repay the loan. Thus, nothing remains to be adjudicated in the CMP. He further submits that neither the sale deed executed in favour of his vendor nor in his favour has been challenged in the suit, although there is an amendment to the plaint. Since the Opposite Party is in possession over the suit property and has made construction, which is almost completed, an order of injunction at this stage will enure to the benefit of none and more particularly, it will prejudice the Opposite Party, as he has made construction by availing loan. It is his submission that this Court should be slow in interfering with concurrent findings of fact arrived at by

learned trial Court as well as learned appellate Court. Hence, he prays for dismissal of the CMP.

5. Considering the rival contentions of the parties and on perusal of the photographs annexed to the affidavit filed by the Opposite Party, it appears that construction of shop room has already been over except some minor civil works. Mr. Bhuyan, learned counsel for the Petitioner, however, submits that since the sale deeds are *void ab initio*, as the widow of recorded tenant had a limited interest in the property and no permission for sale of share of minor co-sharers was taken, the Petitioner should not be allowed to make any further construction. Since the construction is almost complete, this Court feels that no fruitful purpose will be served by delving into merits of the impugned orders under Annexure-5 and 6.

6. In order to prevent further litigation and complicity in the matter, this Court disposes of the CMP with a direction that the Opposite Party shall be allowed to complete the construction, but no new construction shall be undertaken till disposal of the suit. It is further directed that the Opposite Party shall not in any manner alienate the suit property till disposal of the suit and shall not claim any equity on the construction made, in the event, the suit succeeds.

7. With the aforesaid observation and direction, this CMP is disposed of.

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

(K.R. Mohapatra)
Judge