

IN THE HIGH COURT OF ORISSA AT CUTTACK

CMP NO. 921 OF 2022

Padmanav Kar

.... Petitioner

Miss Shradha Das, Advocate

-versus-

Manaranjan Kar and others

.... Opp. Parties

Mr. Dillip Kumar Mishra, Advocate

(For Opp. Party No.1)

CORAM:

JUSTICE K.R. MOHAPATRA

ORDER

07.12.2022

Order No.

4. 1. This matter is taken up through hybrid mode.
2. This CMP has been filed assailing the order dated 17th August, 2022 (Annexure-1) passed by learned District Judge, Bhadrak in CMA No. 17 of 2022 (arising out of RFA No. 25 of 2017), whereby an application filed by the Petitioner under Section 151 C.P.C. seeking police help for implementation of the order of status quo dated 3rd March, 2022 has been rejected.
3. Miss Das, learned counsel for the Petitioner submits that during pendency of the appeal, learned District Judge, Bhadrak vide order dated 3rd March, 2022 in I.A. No. 33 of 2020 taking into consideration the rival claims of the parties directed the parties to maintain status quo over the suit property till disposal of the appeal. On being aware of the order of status quo, the Appellant- Opposite Party No.1 tried to raise construction over the suit land and put to new fence by encroaching upon the suit land in occupation of the Petitioner-Respondent. Finding no other alternative, the Petitioner had initially moved the Sub-Divisional Magistrate, Bhadrak by filing a petition under Section 144 Cr.P.C.

in Criminal Misc. Case No. 7 of 2022 and vide order dated 6th May, 2022, the Sub-Divisional Magistrate, Bhadrak directed to promulgate the preliminary order under Section 144 Cr.P.C. After the expiry of the said period, the Opposite Party No.1 attempted to violate the order of status quo dated 3rd March, 2022. Hence, the Petitioner finding no other alternative filed an application under Section 151 C.P.C. for the aforesaid relief. Relying upon the decision of this Court in the case of ***Manoj Manjari Mohapatra and another Sri Kapila @ Kapilendra Mohapatra and another***, reported in 2021 (II) ILR-CUT-230, Ms. Das, learned counsel for the Petitioner submits that when the relief under Order XXXIX Rule 2-A C.P.C. is not sufficient to protect the order of status quo over the suit land and prevent the prejudice caused to the applicant, the Court can entertain an application under Section 151 C.P.C. to pass appropriate orders even by restoring the position at the time of passing of the restraint order. She verily relied upon the observation of this Court at paragraph-8 of the said judgment which is as under:

“8. Thus, the Court has ample power to exercise its discretion under Section 151 C.P.C., when the remedy under Order XXXIX Rule 2-A C.P.C. will not be sufficient to remedy the prejudice caused to the applicant. The Hon’ble Supreme Court in the case of Meera Chauhan – v- Harsh Bishnoi and another, reported in (2007) 12 SCC 201 in paragraphs- 16, 17 and 18 held as follows:

“16. The power of Section 151 to pass order of injunction in the form of restoration of possession of the code is not res integra now,

17. In Manohar vs. Hira Lal [AIR 1962 SC 527] while dealing with the power of the Court to pass orders for the ends of justice or to prevent the abuse of the process of the Court, this Court held that the courts have inherent jurisdiction to issue temporary order of injunction in the

circumstances which are not covered under the provisions of Order 39 of the Code of Civil Procedure. However, it was held by this Court in the aforesaid decision that the inherent power under Section 151 of the Code of Civil Procedure must be exercised only in exceptional circumstances for which the Code lays down no procedure.

18. At the same time, it is also well settled that when parties violate order of injunction or stay order or act in violation of the said order the Court can, by exercising its inherent power, put back the parties in the same position as they stood prior to issuance of the injunction order or give appropriate direction to the police authority to render aid to the aggrieved parties for the due and proper implementation of the orders passed in the suit and also order police protection for implementation of such order."

She, therefore, submits that the impugned order under Annexure-1 is not sustainable in the eyes of law.

4. Mr. Mishra, learned counsel for the Opposite Party No.1 submits that there is no material on record to show that in fact, the Opposite Party No.1 has violated or attempted to violation of the order of status quo. On a bald allegation of violation of the order of status quo extreme step by taking police help is not desirable. Further, the suit is for partition and parties to the suit have interest over every inch of the suit land till the partition is complete by metes and bounds. He further submits that the Petitioner has a remedy under Order XXXIX Rule 2-A C.P.C. in case there is violation of the order of status quo. As such, the application under Section 151 C.P.C. has rightly been dismissed by learned Appellate Court.

5. Considering the submissions made by learned counsel for the parties, this Court is of the considered opinion that learned

Appellate Court while examining the application under Section 151 C.P.C. should be extremely careful and scan the allegation made in the petition and objection filed thereto meticulously. In the instant case, it appears that learned Appellate Court has not made any endeavour in that regard. It further appears that learned Appellate Court has relied upon the decision in the case of ***Subal Kumar Dey –v- Purna Chandra Giri and others***, reported in AIR 1989 Ori 214, but no discussion has been made as to how the principle laid down is not applicable to the case at hand.

6. In view of the above, the impugned order under Annexure-1 is not sustainable and is accordingly set aside. The matter is remitted back to the learned Appellate Court for adjudication of the petition filed under Section 151 C.P.C (CMA No. 17 of 2022) afresh, keeping in mind the ratio decided in the cases of *Subal Kumar Dey* and *Manoj Manjari Mohapatra* (supra) and giving opportunity of hearing to the parties concerned.

7. Since the Petitioner seeks police assistance for alleged violation of the order of status quo, learned Appellate Court shall make an endeavour for early disposal of the petition under Section 151 C.P.C. in accordance with law.

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

(K.R. Mohapatra)
Judge

bks