

IN THE HIGH COURT OF ORISSA AT CUTTACK

CMP No. 958 of 2022

Swarnarekha Patnaik

..... Petitioner

Mr. Debasis Nanda, Advocate

-versus-

Jagadish Behera and others

.... Opp. Parties

Mr. Amit Prasad Bose, Advocate

(For Opposite Party Nos.1 and 2)

CORAM:

JUSTICE K.R. MOHAPATRA

ORDER

28.11.2022

Order No.

3. 1. This matter is taken up through Hybrid mode.
2. Petitioner in this CMP seeks to assail the order dated 16th August, 2022 (Annexure-4) passed by learned 1st Additional Civil Judge (Senior Division), Bhubaneswar in CS No.1567 of 2016, whereby further proceedings of the suit has been stayed till disposal of Test Case No.27 of 2017 pending before learned District Judge, Khordha at Bhubaneswar.
3. Mr. Nanda, learned counsel for the Petitioner submits that earlier Plaintiff/Petitioner had filed an application to stay further proceedings of the suit till disposal of Test Case No.27 of 2017 pending before learned District Judge, Khordha at Bhubaneswar. The said application was rejected vide order dated 5th May, 2018 (Annexure-2) holding that the Test Case is at a very nascent stage, as the Probate Case was not admitted by then. The said order remained un-assailed and the suit was posted to 16th August, 2022, on which date learned trial Court acting *suo motu* stayed the proceedings of the suit till disposal of

Test Case No.27 of 2017 without giving any opportunity to the Plaintiff/Petitioner to put forth his case. It is his submission that the principal relief claimed in the suit is with regard to validity of registered Relinquishment Deed Nos.6131 and 4350 dated 6th June, 2006. Along with the same, the Plaintiff Petitioner has also prayed for partition and permanent injunction.

3.1 Mr. Nanda, learned counsel for the Petitioner referring to the case status of Test Case No.27 of 2017 (Annexure-5) downloaded from the website, submits that there is no change in the circumstances to entertain the prayer to stay further proceeding of the suit. Had an opportunity been given to the Petitioner it would have been brought to the notice of the Court. Further, he relying upon a decision of the Hon'ble Supreme Court in the case of ***Y.B.Patil and others Vs. Y.L. Patil***, reported in AIR 1977 SC 392 submits that principle of *res judicata* applies to different stages of proceedings of a suit. Hence, the impugned order is not sustainable in the eyes of law and is liable to be set aside.

4. Mr. Bose, learned counsel for Opposite Party Nos.1 and 2 submits that along with a prayer to declare the relinquishment deed to be illegal and void, the Petitioner has also prayed for partition. If the decree with regard to partition is passed it will certainly affect the probate proceeding pending before learned District Judge. He draws attention of this Court to order dated 8th August, 2022 by which learned trial Court directed the parties to intimate the status of the probate proceeding and posted the matter to 16th August, 2022. Thus, the submission of Mr. Nanda, learned counsel for the Petitioner that the Plaintiff/Petitioner was

not given an opportunity of hearing is not correct. He further submits that the Plaintiff/Petitioner had himself prayed for a direction to stay further proceeding of the suit. Thus, stay of the proceeding in the suit cannot be said to be prejudicial to the interest of the Plaintiff/Petitioner. He, therefore, prays for dismissal of the CMP.

5. Considering the rival contentions of the parties and on perusal of record, it reveals that the Plaintiff had earlier filed an application for stay of further proceeding of the suit in view of pendency of Test Case No.27 of 2017. The said application was rejected vide order dated 5th May, 2018 on the ground that the Test Case is at a very preliminary stage and the same was not admitted by then. Annexure-5, the downloaded copy of the case status of Test Case No.27 of 2017 discloses that it was last posted to 14th September, 2022 for removal of defect. Although order dated 8th August, 2022 reveals that the parties were directed to apprise learned trial Court about the status of Test Case No.27 of 2017, but it is not clear from the impugned order under Annexure-4 that the Plaintiff was given an opportunity to apprise the Court about the same. It further appears that order dated 16th August, 2022 has been passed *suo motu* at the stage of argument of the suit.

6. In that view of the matter, this Court feels that the matter requires fresh consideration by learned trial Court giving opportunity of hearing to the parties concerned. Hence, order dated 16th August, 2022 under Annexure-4 is set aside and the matter is remitted back to learned trial Court for fresh

consideration with regard to stay of further proceeding of the suit giving opportunity of hearing to the parties concerned.

7. It is made clear that this Court has not expressed any opinion on the merit of the submissions made by learned counsel for the parties.

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

Issue urgent certified copy of the order on proper application.



s.s.satapathy