

IN THE HIGH COURT OF ORISSA AT CUTTACK

CMP No. 968 of 2022

Santosh Kumar Sahoo

Petitioner

Mr. Bibekananda Bhuyan, Advocate

-versus-

Bhagaban sahuo

.... ***Opp. Party***

**CORAM:
JUSTICE K.R. MOHAPATRA**

**ORDER
19.10.2022**

Order No.

1. 1. This matter is taken up through hybrid mode.
2. 2. Petitioner in this CMP seeks to assail the order dated 13th September, 2022 (Annexure-4) passed by learned District judge, Nayagarh in FAO No.19 of 2022, whereby the order of status quo dated 3rd August, 2022 (Annexure-3) passed by learned Senior Civil Judge (LR & LTV), Nayagarh in IA No.70 of 2021 (arising out of CS No.197 of 2021) except 'B' schedule property, is confirmed.
2. 2. Mr. Bhuyan, learned counsel submits that in respect of Suit Schedule- 'A' and 'C' property, learned appellate Court confirmed the order of status quo, whereas the order of status quo in respect of Suit Schedule – 'B' property has been vacated.
3. 3. It is submitted by learned counsel for the Petitioner that although the property at Schedule- 'B' of the plaint stands recorded in the name of Defendant No.1/Opposite Party, but the same was acquired by the Petitioner. As the Opposite Party was the 'Karta' of the family at the relevant time and 'B' schedule property was purchased in his name and hence the provisions of

Benami Transactions (Prohibition) Amendment Act, 2016 is not applicable to the case at hand. He further submits that the lis is to be protected during pendency of the suit. If the interim order of status quo with regard to Schedule- 'B' property is vacated it will lead to multiplicity of litigation. He further submits that while adjudicating the matter, learned District Judge has observed that Schedule-'B' property is self-acquired property of the Opposite Party. The said observation may influence the learned trial Court while adjudicating the suit in view of the fact that suit Schedule-'B' property was purchased by the Petitioner in the name of the Opposite Party. The Opposite party had no source of income to acquire the property at the relevant time. Hence, such an observation of learned District Judge, Nayagarh is required to be struck off. He, therefore, prays to set aside the impugned order confirming the order of learned trial Court granting status quo in respect of Schedule- 'A', 'B' and 'C' property.

4. Considering the submission made by learned counsel for the Petitioner and on perusal of record, it appears that Schedule-'B' property stands recorded in the name of the Opposite Party. Although it is claimed by the Petitioner that the said property was acquired by him in the name of the Opposite Party, who was 'Karta' of the family at the relevant time, but the Opposite Party stoutly denied the same in his written statement. As such, the same is a matter of adjudication in the suit. In view of the above, it is made clear that the observation of learned District Judge, Nayagarh that Schedule- 'B' property is the self-acquired property of the Appellant/Opposite Party is prima facie one and

shall not influence learned trial Court while adjudicating the suit. At present, Schedule- 'B' property stands recorded in the name of the Opposite Party. Thus, no injunction should be passed against him to deal with said property independently. However, any transaction/alienation during pendency of the suit shall be subject to the provision of Section 52 of the Transfer of Property Act, 1881. In view of the above, I find no infirmity in the impugned order under Annexure-4.

5. Accordingly, the CMP is disposed of with the aforesaid observation without interfering with the impugned order.

Issue urgent certified copy of the order on proper application.

(K.R. Mohapatra)
Judge

