

IN THE HIGH COURT OF ORISSA AT CUTTACK

CMP NO. 982 OF 2022

Ranjan Kumar Sahoo ***Petitioner***
Mr. Bibekananda Bhuyan, Advocate
-versus-
Tuni Sahoo and another ***Opp. Parties***

CORAM:
JUSTICE K.R. MOHAPATRA

ORDER
16.11.2022

Order No.

3. 1. This matter is taken up through hybrid mode.
2. Order dated 19th September, 2022 (Annexure-10) passed in FAO NO. 44 of 2021 is under challenge in this CMP, whereby learned District Judge, Jagatsinghpur dismissing the appeal confirmed the order dated 9th November, 2021 (Annexure-5) passed by learned Senior Civil Judge, Jagatsinghpur in I.A. No. 172 of 2020 (arising out of C.S. No.217 of 2020) 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 common ancestor, namely, Kalandi Sahu, was a bhag tenant in respect of the suit land. The vendor, namely, Susilabala Parija, was the absolute owner in respect of the suit property and the same stood recorded in her name in the consolidation R.O.R. Since she expressed her willingness to alienate the suit property, the same was acquired in the name of Defendant No.1 from the joint family nucleus. The suit property includes the joint family residential house. C.S. No.217 of 2020 has been filed for partition by the present Petitioner claiming

1/5th share in the suit property. Since the Defendant No.1 attempted to alienate the suit property, an application under Order XXXIX Rules 1 and 2 C.P.C. in I.A. No. 172 of 2020 was filed. Learned trial Court holding that the suit property has been recorded exclusively in the name of Defendant No.1, who is a female Hindu, held that no injunction can be granted in her favour as she is the absolute owner in respect of the suit property. Learned District Judge, Jagatsinghpur concurrently held that the suit property stands recorded in the name of Defendant No.1 in consolidation Khata. Hence, he dismissed the appeal. It is his submission that learned Courts have erred in law as Section 14 attaches a presumption of the absolute ownership of a female Hindu in whose name the property stands recorded. But, the presumption is rebuttable. If the *lis* is not protected during pendency of the suit, there might be multiplicity and protracted litigations. He also submits that Section 52 of the Transfer of Property Act, 1882 will not come to the aid of the present Petitioner as, by the time the suit is disposed of, the property itself might have been transferred to different persons. Hence, he prays for setting aside the impugned order and to allow the application under Order XXXIX Rules 1 and 2 C.P.C.

4. Upon hearing learned counsel for the Petitioner and on perusal of the record, it appears that the suit property stands recorded in the name of Defendant No.1 in consolidation Khata No.400. Although learned counsel for the Petitioner raises a dispute that it is not the consolidation Khata and the same is a mutation R.O.R., but the schedule of land clearly discloses that

Khata No.400 is a consolidation Khata. Thus, it is apparent that the property stands recorded in the name of Defendant No.1 in the consolidation R.O.R., which is a document of title. The Defendant No.1 is the exclusive owner in respect of the suit property, unless it is proved otherwise. In that view of the matter, allowing the prayer of the Petitioner will amount to restrain the true owner from enjoying the suit property independently.

5. In view of the above, I find no infirmity in the impugned order.

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

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

(K.R. Mohapatra)
Judge

bks

