

IN THE HIGH COURT OF ORISSA AT CUTTACK
CMP No. 998 OF 2022

Umakanta Biswal and others *Petitioners*
Mr. Jatindra Kumar Mohapatra, Advocate
-versus-
Durgadasi Ram and others *Opp. Parties*

CORAM:
JUSTICE K.R. MOHAPATRA

ORDER
21.11.2022

Order No.

01. 1. This matter is taken up through hybrid mode.
2. Order dated 8th August, 2022 (Annexure-3) passed by learned Civil Judge (Junior Division), Bhadrak in Civil Suit No.139 of 2013 is under challenge in this CMP, whereby an application filed by the Petitioners to be impleaded as parties to the final decree proceeding has been rejected.
3. Mr. Mohapatra, learned counsel submits that the Petitioners purchased the property in the year, 2015 from one Brundaban Das, who had purchased the land from Defendant No.4 before filing of the suit with consent of other co-sharers. Neither said Brundaban Das nor the present Petitioners are made parties to the suit and the preliminary decree was passed. Since the vendor of the Petitioners had already acquired right over the suit property before filing of the suit for partition, he should have been made party. The Petitioners being a *lis pendens* purchaser of the suit property are also proper parties to the suit. When the Commissioner went to the spot for verification and identification for allotment of share, the

Petitioners came to know about filing of the suit and filed an application to be impleaded as parties to the suit. The said application was rejected on the ground that the preliminary decree was passed on 19th February, 2016. Neither any parties to the suit nor any 3rd party Petitioners raised any plea to be impleaded as parties to the suit. The 3rd party Petitioners being the *lis pendens* purchaser are entitled to the share of Defendant No.4, as the Defendant No.4 cannot sale more than his share. On the aforesaid finding, learned trial Court rejected the petition.

4. It is his submission that unless the Petitioners are made parties to the suit, there is every likelihood of multiplicity of litigation. Hence, for complete adjudication of the suit, the *lis pendens* purchaser, namely, the Petitioners are required to be impleaded as parties to the suit. Hence, he prays for setting aside the impugned order under Annexure-3.

5. Considering the submission made by learned counsel for the Petitioners and on perusal of the record, it appears that the preliminary decree was passed on 19th February, 2016 and subsequently final decree proceeding was initiated for allotment of share as per the preliminary decree. The claim of the Petitioners is that one Brundaban Das had purchased a portion of the suit property from Defendant No.4 with consent of other co-sharers by virtue of a Registered Sale Deed dated 3rd August, 2012. Neither said Brundaban Das was impleaded as party nor he has made any application in that regard. The Petitioners claim that they have purchased the property from Brundaban Das, which a part of the suit land. If that be so, they can claim

right over the purchased land to the extent of share allotted to Defendant No.4. Although it is submitted by Mr. Mohapatra, learned counsel for the Petitioners that after purchase, they have already mutated the land in their name, but settlement R.O.R. neither creates nor extinguishes right of any of the parties. It appears from the impugned order under Annexure-3 that the final decree is at the stage of identification of land and allotment share of the co-sharers. Thus, implection of the *lis pendens* purchaser at this stage will certainly linger the proceeding. On the other hand, the Petitioners can claim property in the appropriate forum from the share of the Defendant No.4, if they establish the same. Thus, I find no infirmity in the impugned order under Annexure-3.

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

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

(K.R. Mohapatra)
Judge

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