

IN THE HIGH COURT OF ORISSA AT CUTTACK

CMP No. 1031 of 2022

Sameer Chandra Dash

....

Petitioner

Mr. Ranjit Mohanty, Advocate

-versus-

Pitambar Behera

....

Opp. Party

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

ORDER

14.12.2022

Order No.

2. 1. This matter is taken up through Hybrid mode.
2. 2. Petitioner in this CMP seeks to assail the order dated 9th September, 2022 (Annexure-3) passed in FAO No.112 of 2016, whereby learned Additional District Judge, Kendrapara dismissing the appeal confirmed the order dated 28th November, 2016 (Annexure-2) passed by learned Civil Judge, Aul in IA No.43 of 2016 (arising out of CS No.40 of 2016) dismissing an application under Order XXXIX Rules 1 and 2 CPC.
3. 3. Mr. Mohanty, learned counsel for the Petitioner submits that Opposite Party/Defendant being in badly need of land approached the Plaintiff/Petitioner to purchase the suit land. The suit land has been settled with him by the Tahasildar, Aul in Bebondabasta Case No.285 of 2001 and accordingly ROR was published. Initially, the Plaintiff was not interested to alienate the property, but by pressurizing the Plaintiff/Petitioner, the Defendant/Opposite Party managed to get the sale deed in respect of the suit land executed on 3rd September, 1988 and it was registered. It is submitted by Mr. Mohanty, learned counsel that at the time of purchase there was

a condition between the Plaintiff and the Defendant to the effect that at the time of need of the Plaintiff, the Defendant would restore the property in favour of the Plaintiff/Petitioner. Though the Plaintiff required the property and requested the Defendant to restore the same in his favour, but he refused to do so. Hence, the CS No.40 of 2016 has been filed for permanent injunction. Along with the plaint, the Plaintiff also filed IA No.43 of 2016 under order XXXIX Rules 1 and 2 CPC to restrain the Defendant from entering upon the suit property. The said petition was rejected vide order dated 28th November, 2016 under Annexure-2. Assailing the same, the Petitioner preferred FAO No.112 of 2016, which was also dismissed vide order dated 9th September, 2022 under Annexure-3. Hence, this CMP has been filed.

3.1 It is his submission that the Defendant filed a revision under Section 15(b) of the Odisha Survey Settlement Act, 1958 to correct the ROR in his name on the basis of the sale deed dated 3rd September, 1988 and the matter was remitted to Tahasildar, Aul for consideration. Tahasildar, Aul on consideration of the case, rejected the prayer of the Defendant/Opposite party to record the land in his name. The writ application against the said order has also been rejected. These material aspects were not taken into consideration by the learned trial Court and the appellate Court, as well, while adjudicating the petition under Order XXXIX Rules 1 and 2 CPC. Hence, the impugned orders under Annexures-2 and 3 are not sustainable and are liable to be set aside. The Defendant should be restrained from entering upon the suit land.

4. Considering the submission made by learned counsel for the Petitioner and on perusal of record, it appears that Plaintiff/Petitioner does not dispute the registered sale deed dated 3rd September, 1988 executed by him in favour of the Defendant/Opposite Party. Learned appellate Court relying upon the report of the RI to Tahasildar, Aul came to hold that the Opposite Party is in possession over the suit land. Registered sale deed attaches a presumption of passing of title to the vendee (Opposite Party) unless the same is rebutted in due process of law. In the instant case, the suit has been filed for injunction simplicitor, as submitted by Mr. Mohanty, learned counsel for the Petitioner. In view of the registered sale deed, it is presumed that the Opposite Party is in possession over the suit land, which is not rebutted by producing materials to the contrary. It also appears that learned appellate Court dealt with case laws has rightly to come to a conclusion that the Petitioner is not entitled to the injunction, as prayed for. Thus, this Court finds no merit in the CMP.

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

(K.R. Mohapatra)
Judge