

IN THE HIGH COURT OF ORISSA AT CUTTACK
CMP NO. 1069 OF 2022

Kanchada Manjula ***Petitioner***
Mr. Lalit Kumar Maharana, Advocate
-versus-
Rajeshwar Sahu and others ***Opp. Parties***

CORAM:
JUSTICE K.R. MOHAPATRA

ORDER
21.11.2022

Order No.

1. This matter is taken up through hybrid mode.
2. Order dated 11th October, 2021 (Annexure-7) passed in FAO No. 39 of 2019 (T) is under challenge in this CMP, whereby learned Additional District Judge-cum-Special Judge (Vigilance), Berhampur, Ganjam reversed the order dated 1st October, 2019 (Annexure-5) passed by learned 2nd Additional Senior Civil Judge, Berhampur in I.A. No.88 of 2018 (arising out of C.S. No.241 of 2018) filed by the Plaintiff-Opposite Party No.1 under Order XXXIX Rules 1 and 2 C.P.C.
3. Mr. Maharana, learned counsel for the Petitioner submits that the Defendant No.4 is the Petitioner in this CMP. C.S. No. 241 of 2018 has been filed by the Plaintiff-Opposite Party No.1 for declaration of right, title, interest and permanent injunction as well as for recovery of possession. The claim of the Plaintiff in the suit is that the suit property has been jointly recorded in the name of Chintamani Sahu and Draupadi Sahu. The Defendant Nos.1 to 3 are legal heirs of late Draupadi Sahu, wife of Chintamani Sahu, who had no right, title and interest

over the suit property as Draupadi Sahu had no manner of right, title and interest over the possession of the same by virtue of the judgment and decree passed by this Court in F.A. No.100 of 1964. As such, alienation of the suit property by them in favour of Defendant No.4 is void and illegal.

4. The Defendant No.4 filed written statement alleging that Draupadi Sahu was not a party either to T.S. No. 8 of 1964 or F.A. No.100 of 1964. The subject matter of dispute was also different. As such, playing fraud on the Court, the Plaintiff had approached the Court. Along with the plaint, the Plaintiff-Opposite Party No.1 filed I.A. No.88 of 2018 under Order XXXIX Rules 1 and 2 C.P.C. to restrain the present Petitioner from entering upon the suit land, changing the nature and character of the same and from alienating the suit property. Learned trial Court considering the fact that the aforesaid title suit and first appeal do not involve the subject matter of dispute rejected the application vide its order dated 1st October, 2019. Assailing the same, the Plaintiff-Opposite Party No.1 preferred an appeal before learned District Judge, Berhampur, Ganjam. The said appeal was subsequently transferred to the Court of learned Additional District Judge-cum-Special Judge (Vigilance), Berhampur, Ganjam and the same was registered as FAO No.39 of 2019 (T). Learned Appellate Court without giving any weightage to the fraud committed by the Plaintiff-Opposite Party No.1 in approaching the Court and holding that Chintamani Sahu had a share in the suit property, reversed the order dated 1st October, 2019 (Annexure-5) passed in I.A. No.88

of 2018 and restrained the present Petitioner from changing the status and nature of the suit land till disposal of the suit.

5. Mr. Maharana, learned counsel for the Petitioner further submits that the Defendant No.4 acquired title from the legal heirs of Chintamani Sahu, namely, Defendant Nos.1 to 3 and Draupadi Sahu in whose name the suit land has been jointly recorded. This aspect was lost of by learned Appellate Court while adjudicating the matter. It is his submission that injunction is a relief of equity. A party who comes to the Court with unclean hands is not entitled to the relief of injunction. In support of his contention, he relied upon the decision in the case of *M/s. Mideast Integrated Steels Ltd. –v- M/s. Khatau Narbheram & Co.*, reported in 2016 (II) ILR-CUT-675 in which it is held at paragraph-17 as under:

“17. xxx xxx xxx

Thus, all material facts must be fully and fairly stated to the Court by the applicant who seeks a temporary injunction. There must be no concealment or misrepresentation of any material fact. In the case of M/s. Seemax Construction (P) Ltd. v. State Bank of India and another, reported in AIR 1992 Delhi 197, it has been held as under:

"10. The suppression of material fact by itself is a sufficient ground to decline the discretionary relief of injunction. A party seeking discretionary relief has to approach the court with clean hands and is required to disclose all material facts which may, one way or the other, affect the decision. A person deliberately concealing material facts from court is not entitled to any discretionary relief. The court can refuse to hear such person on merits. A person seeking relief of injunction is required to make honest disclosure of all relevant statements of facts otherwise it would amount to an abuse of the process of the court. Reference may be made

to decision in The King v. The General Commissioners for the purposes of the Income-tax Acts for the District of Kensington, 1917 (1) King's Bench Division 486 where the court refused a writ of prohibition without going into the merits because of suppression of material facts by the applicant. The legal position in our country is also no different. (See: Charanji Lal v. Financial Commissioner, Haryana, Chandigarh, AIR 1978 Punjab and Haryana 326 (1711)). Reference may also be made to a decision of the Supreme Court in Udai Chand v. Shankar Lal. In the said decision the Supreme Court revoked the order granting special leave and held that there was a misstatement of material fact and that amounted to serious misrepresentation. The principles applicable are same whether it is a case of misstatement of a material fact or suppression of material fact."

Thus, there remains no element of doubt that the plaintiff/appellant has not come to the Court with clean hand to seek for a relief of equity and discretion inasmuch as he has suppressed material fact, which was brought to light by the defendant-respondent."

6. In view of the above, when the Plaintiff-Opposite Party No.1 on affidavit has stated falsehood and his claim being solely based upon the judgment and decree passed in FAO No.100 of 1964, is not entitled to any relief of equity.

7. Considering the submission made by learned counsel for the Petitioner and on perusal of the record, more particularly the impugned order under Annexure-7, it is apparent that learned Appellate Court taking into consideration the contention of Plaintiff to the effect that T.S. No.8 of 1964 does not relate to Draupaid, held that even if the statement of the Plaintiff-Opposite Party No.1 is found to be false, which is a matter of adjudication of the suit, still Chintamani Sahu has a half share in

the suit property and he could have alienated the same. Finding that the Defendant No.4 is in possession over the suit land, learned trial Court has only restrained him from changing the status and nature of the suit land, so that the lis can be protected during pendency of the suit. The plea of fraud is a matter of evidence. Although it is strenuously argued by Mr. Maharana, learned counsel that no document relating to T.S. No.8 of 1964 or F.A. No.100 of 1964 has been filed disclosing that said Draupadi Sahu was a party therein, but the same is a subject matter of adjudication. Hence, this Court does not want to give any opinion on the same. It further appears that Chintamani Sahu had half share in the suit property and he has a right to alienate the same. The extent of his share or validity of the sale deed etc. can only be adjudicated at the time of hearing of the suit. In the instant case, the case law cited by Mr. Maharana, learned counsel for the Petitioner is of no assistance to him as in the said case, it was established that the Opposite Party therein had resorted to falsehood.

8. As the property in question appears to be in possession of Defendant No.4, he is only restrained from changing the status and nature of the suit land, which, in my opinion, is just and reasonable to protect the lis during pendency of the suit.

9. 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

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