

**IN THE HIGH COURT OF ORISSA AT CUTTACK**

**CMP No. 1160 OF 2022**

***Jema Patra and others***

***.... Petitioners***

Mr. S.S.K. Nayak, Advocate

***-versus-***

***Jaganath Mohanty and another***

***.... Opp. Parties***

**CORAM:**

**JUSTICE K.R. MOHAPATRA**

**ORDER**

**21.12.2022**

**Order No.**

01. 1. This matter is taken up through hybrid mode.
2. The Petitioners in this CMP seek to assail the order dated 18<sup>th</sup> October, 2022 (Annexure-7) passed by learned District Judge, Jajpur in F.A.O. No.07 of 2022, whereby allowing the appeal learned appellate Court set aside the order dated 25<sup>th</sup> February, 2022 (Annexure-6) passed by learned Senior Civil Judge, Jajpur in I.A. No.131 of 2021 (arising out of C.S. No.329 of 2021), directing the parties to maintain *status quo* over the suit property.
3. Mr. Nayak, learned counsel submits that the Plaintiffs are the Petitioners in this CMP. They have filed a suit under Section 4 of the Partition Act, 1893 (for short 'the Act') for partition of the joint family property and to allot them their legitimate share in the joint family property. It is his submission that earlier T.S. No.175 of 1993 was filed by the Defendants against the Plaintiffs for permanent injunction, mandatory injunction and for recovery of possession. Although, the Petitioners had taken a plea that they have acquired title by adverse possession over the suit land, but the said plea was negatived and they were directed to deliver

vacant possession of the suit land to the Defendants. Since the land stood recorded in the name of the Defendants in the consolidation R.O.R., the Plaintiffs-Petitioners after disposal of T.S. No.175 of 1993, purchased the suit property from co-sharers of the Defendants. Thus, the Plaintiffs-Petitioners have filed the present suit under Section 4 of the Act for allotment of their legitimate share in the joint family property.

4. Since the Defendants proceeded with the construction over the suit property, the Petitioners during pendency of the suit, filed an application under Order XXXIX Rules 1 and 2 C.P.C. (I.A. No.131 of 2021) and learned trial Court considering the same, directed the parties to maintain *status quo* vide his order dated 25<sup>th</sup> February, 2022 under Annexure-6. Being aggrieved, the Opposite Parties preferred F.A.O. No.07 of 2022, which was allowed vide order dated 18<sup>th</sup> October, 2022 under Annexure-7. Hence, this CMP has been filed assailing the said order.

5. It is submitted by Mr. Nayak, learned counsel for the Petitioners that since the Defendants have sold out their entire share to different persons, they are not taking any interest in the suit. But the Opposite Parties are making construction over the suit land exceeding their share. Thus, by the time, the suit under Section 4 of the Act is decided, the Petitioners may not get their legitimate share in the suit properties. Hence, he prays for setting aside the impugned order under Annexure-7 and to maintain the order under Annexure-6.

6. Considering the submission of Mr. Nayak, learned counsel for the Petitioners, it is apparent that the suit property is recorded in the name of the Opposite Parties in consolidation R.O.R.. The Petitioners have been directed to deliver the vacant possession of

the suit land to the Opposite Parties in T.S. No.175 of 1993. The said decree is still in force. Further it is submitted by Mr. Nayak, learned counsel that the Petitioners have purchased the suit property after the decree passed in T.S. No.175 of 1993.

7. Taking into consideration the aforesaid facts, this Court is of the considered opinion that if at this stage, the Opposite Parties are restrained from enjoying their joint property independently, it would amount to frustrate the decree passed in T.S. No.175 of 1993. The Petitioners being the purchasers of joint interest, will be entitled to the property from the share of their vendor. They cannot claim right over a definite parcel of the joint family property. Thus, this Court finds that learned appellate Court has committed no error in passing the impugned order under Annexure-7.

8. 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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