

IN THE HIGH COURT OF ORISSA AT CUTTACK

CMP NO. 1179 OF 2022

Bamadev Sasmal

....

Petitioner

Mr. Soumya Ranjan Das, Advocate

-versus-

Sadhu Pradhan

....

Opp. Party

CORAM:

JUSTICE K.R. MOHAPATRA

ORDER

15.12.2022

Order No.

4. 1. This matter is taken up through hybrid mode.
2. This CMP has been filed assailing the order dated 26th September, 2022 (Annexure-1) passed by learned Civil Judge (Junior Division), Nimapara in T.S. No. 168/98 of 484/1996 (I), whereby an application for stay of further proceeding of the suit has been rejected.
3. Mr. Das, learned counsel for the Petitioner submits that the suit property is the subject matter of dispute in a consolidation proceeding. The subject matter of dispute is pending before this Court in W.P.(C) No. 10304 of 2017, wherein vide order dated 7th June, 2017 this Court stayed the order dated 17th June, 2016 passed by the Commissioner, Consolidation, Odisha, Bhubaneswar in R.C. No. 545 of 2014. The said order is continuing till date. The suit has been filed for declaration of right, title and interest and permanent injunction. In view of the fact that the subject matter of dispute in the suit is pending before this Court in W.P.(C) No. 10304 of 2017, an application was filed for stay of further proceeding of the suit, which has been rejected holding that since

there is no direction to stay further proceeding of the suit till disposal of W.P.(C) No. 10304 of 2017, no direction for stay of further proceeding of the suit can be issued. He relied upon the decision in the case of ***Duruju Mallik and others –v- Krupasindhu Swain and others***, reported in AIR 1985 Orissa 202, wherein it has been held that a suit for permanent injunction does not abate during pendency of the consolidation operation. As prayer for declaration of right, title and interest is involved in the suit, in all fairness, learned trial Court should have stayed the proceeding of the suit.

4. In the instant case, it is admitted that the subject matter of dispute in the civil suit as well as the writ petition are one and the same. Thus, in view of Section 51 of the Orissa Consolidation of Holdings and Prevention of Fragmentation of Land Act, 1972 (for short 'the Act'), a prayer for declaration of right, title and interest is not maintainable. Only a suit for permanent injunction can be maintained in respect of the subject matter of dispute. It is also held by the Hon'ble Full Bench of this Court that a suit for permanent injunction does not abate during pendency of the consolidation operation. Hence, there is no bar to proceed with the suit with regard to the relief of permanent injunction, if it can be granted independent of relief seeking declaration of right, title and interest. This aspect was not taken into consideration by learned trial Court while deciding the matter.

5. In view of the above, the impugned order under Annexure-1 is set aside and the matter is remitted back to the learned trial Court to adjudicate the Petition for stay of further proceeding of

the suit afresh, giving opportunity of hearing to the parties concerned.

6. Since this order has been passed without issuing notice to the Opposite Party, he is at liberty to seek variation of the same, if he feels aggrieved.

7. With the aforesaid observation and direction, the CMP is disposed of.

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

(K.R. Mohapatra)
Judge

bks

