

IN THE HIGH COURT OF ORISSA AT CUTTACK**CMP No. 743 of 2021*****Dharanidhar Rout***

.....

Petitioner

Mr. Amit Prasad Bose, Advocate

*-versus-****Babaji Charan Rout***

....

Opp. Parties

Mr. Bibekananda Baisakh, Advocate

CORAM:**JUSTICE K.R. MOHAPATRA****ORDER****28.06.2022****Order No.**

2.
 1. This matter is taken up through Hybrid mode.
 2. Petitioner in this CMP seeks to assail the order dated 8th November, 2021 (Annexure-1) passed in CS No.4133 of 2014, whereby learned Civil Judge (Junior Division), Kendrapara refused to stay further proceeding of the Civil Suit during pendency of consolidation proceeding.
 3. Mr. Bose, learned counsel for the Petitioner submits that the Consolidation Officer, Kendrapara in Objection Case No.3376 of 1985 directed to record the land in question in the name of the Plaintiff/Opposite Party. Assailing the same, father of the Defendant/Petitioner preferred Revision Case No.102 of 2007 before the Commissioner, Consolidation, Odisha, Cuttack. On consideration, learned Commissioner remitted the matter back to the Consolidation Officer, Kendrapara for its disposal. Being aggrieved, the Plaintiff/Opposite Party preferred W.P.(C) No.3912 of 2010 before this Court, which was allowed. Assailing the same, the present Petitioner/Defendant has filed

W.A. No.554 of 2016. Finding prima facie case, this Court has issued notice in the writ appeal and the matter is *sub judice*. Petitioner/Defendant has not filed any interim application in the said writ appeal. Alleging that the Defendant created disturbance in the peaceful possession, the Plaintiff/Opposite Party filed CS No.4133 of 2014 with a prayer to restrain permanently the Defendant/Petitioner from dispossessing him from the suit joint family building along with other consequential reliefs. Due to pendency of the consolidation proceeding in WA No.554 of 2016, the Defendant/Petitioner filed an application under Section 4(4) of the Odisha Consolidation of Holdings and Prevention of Fragmentation of Land Act, 1972 (for short, 'Consolidation Act') with a prayer to stay further proceeding of the suit till disposal of the writ appeal. It is his submission that while adjudicating the issue of injunction, learned trial Court has to incidentally delve into the issue of title in respect of the suit land. Before passing a decree/order of injunction, learned trial Court has to opine that the party seeking injunction has title over the suit property. Thus, the prayer of the Petitioner-Defendant comes within the fold of Section 4(4) of the Consolidation Act. As such, further proceeding of the suit ought to have been stayed by the learned trial Court during pendency of the consolidation proceeding.

3.1 However, the prayer of the Petitioner-Defendant was turned down by the learned Civil Judge (Junior Division), Kendrapara vide order dated 8th November, 2021. Assailing the same, the present CMP has been filed.

4. Mr. Baisakh, learned counsel for the Opposite Party submits that earlier this Court vide order dated 21st June, 2017

in CMP No.336 of 2016 directed for disposal of the suit, i.e., CS No.4133 of 2014 within six months. However, the said suit is still pending.

5. This Court vide order dated 23rd December, 2021 issued notice in the matter and directed stay of further proceeding in CS No.4133 of 2014 pending before learned Civil Judge (Junior Division), Kendrapara till the next date.

6. Section 4(4) of the Consolidation Act is relevant for consideration of this case, which reads as follows.

*“4. **Effect of Notification-** Upon the publication of notification issued under Sub-section (1) of Section 3 in the Official Gazette, the conditions hereinafter set forth, shall subject to the provisions of this Act, ensue in the consolidation area till the publication of notification under Section 41 or Sub-section (1) of Section 5, as the case may be-*

(4) Every suit and proceedings for declaration of any right or interest in any land situate within the consolidation area in regard to which proceedings could be or ought to be started under this Act, which is pending before any Civil Court, whether of the first instance or appeal reference or revision shall, on an order being passed in that behalf by the court before which such suit or proceeding is pending stand abated.”

7. Upon hearing learned counsel for the parties and on perusal of the materials on record, it appears that the Commissioner, Consolidation has remitted the matter back to the Consolidation Officer, Kendrapara. Assailing the same, Plaintiff/Opposite Party filed W.P.(C) No.3912 of 2010, which was allowed. Assailing the same, the Petitioner/Defendant has filed WA No.554 of 2016, which is pending for consideration.

8. Law is well-settled that a suit for injunction is maintainable during pendency of the consolidation proceeding. Further the provision of Section 4(4) of the Consolidation Act

makes it clear that suit or proceeding for declaration of right, title and interest over the land situated within the consolidation area shall abate during pendency of the consolidation operation. Admittedly, CS No.4133 of 2014 is not for declaration of right, title or interest. It is filed for permanent injunction simplicitor. Merely because the Court has to incidentally go into the question of title while adjudicating a suit for injunction, that cannot be a ground either to stay the proceeding of the suit or abate the same during consolidation operation. It is more so because in a suit for permanent injunction no declaratory relief for right, title or interest can be granted. Moreover, in the present case, the prayer for stay of further proceedings of the suit does not fall within the scope of Section 10 of C.P.C., as no such case is made out. The Petitioner-Defendant simply prayed for stay of further proceeding of the suit on the basis of provisions under Section 4(4) of the Consolidation Act. It further appears that the Defendant/ Petitioner had already examined two witnesses by the time the impugned order was passed. In that view of the matter, learned trial Court has committed no illegality in refusing to grant stay of further proceeding of the suit. Hence, I am not inclined to interfere with the impugned order.

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

Issue urgent certified copy of the order on proper application.

(K.R. Mohapatra)
Judge