

IN THE HIGH COURT OF ORISSA AT CUTTACK

CMP NO. 1299 OF 2022

Tanmay Kumar Pattnaik and others* *Petitioners

Mr. Soumya Mishra, Advocate

-versus-

Bibhu Prasad Sahoo and others* *Opp. Parties

CORAM:

JUSTICE K.R. MOHAPATRA

ORDER

20.12.2022

Order No.

1. This matter is taken up through hybrid mode.
2. Order dated 21st May, 2022 (Annexure-9) passed by learned Senior Civil Judge, Khurda in C.S. No.298 of 2011 is under challenge in this CMP, whereby an application filed by Defendant Nos.1 to 4 for implemation of *list pendense* purchasers as parties to the suit has been allowed.
3. Mr. Mishra, learned counsel for the Petitioners submits that the case is a chequered history. Earlier the Defendant-Opposite Party No.1 was restrained from alienating the suit property in an application under Order XXXIX Rules 1 and 2 C.P.C. in I.A. No.167 of 2011. The said order was challenged unsuccessfully up to this Court in CMP No. 1255 of 2019. Subsequently, the Plaintiffs alienated certain portions of the suit land and an application under Order 1 Rule 10 C.P.C. was filed, which was allowed. The said order was challenged by the predecessor of the Petitioners, namely, Sudhamayee Pattnaik and others in CMP No.258 of 2019, which was dismissed vide order dated 28th March, 2022 upholding the implemation of *lis*

pendense purchasers as parties to the suit by learned trial Court. However, order of this Court was assailed before the Hon'ble Supreme Court and in a reported decision, the Hon'ble Supreme Court in the case of ***Sudhamayee Pattnaik and others –v- Bibhu Prasad Sahoo and others*** in Civil Appeal No.6370 of 2022, (2022 SCC Online 1234) in which it is held as under:

*“6. Now so far as the reliance placed upon the decision of this Court in the case of **Rahul S. Shah (supra)** by the High Court is concerned, on facts, the said decision shall not be applicable to the facts of the case on hand. The said decision was not a case of an application under Order 1 Rule 10 C.P.C. to implead the persons not party to the suit as defendants and that too at the instance of the defendants.”*

4. Subsequently, certain other portions of the suit land were alienated during pendency of the suit and an application under Order 1 Rule 10(2) C.P.C. was filed by Defendant Nos. 1 to 4, which was allowed vide order dated 21st May, 2022 as at Annexure-9. Assailing the same, this CMP has been filed.

5. It is submitted by Mr. Mishra, learned counsel for the Petitioner that in view of the ratio decided in the case of ***Sudhamayee Pattnaik and others*** (supra) in a similar application filed by Defendant Nos.1 to 4 under Order 1 Rule 10 C.P.C. earlier in the instant suit, Hon'ble Supreme Court has held as quoted (supra). Hence, the impugned order is not sustainable.

6. Taking note of the submission of learned counsel for the Petitioner, this Court finds that after the impugned order under Annexure-9 was passed on 21st May, 2022, the Hon'ble

Supreme Court dealt with the earlier application filed under Order 1 Rule 10 C.P.C. and observed as quoted (supra).

7. In view of the above, the petition under Order 1 Rule 10 C.P.C. requires fresh consideration keeping in mind the observation made by the Hon'ble Supreme Court.

8. Accordingly, this Court feels that no fruitful purpose will be served by issuing notice to the Opposite Parties. Hence, the impugned order under Annexure-9 is set aside and the matter is remitted back to the learned trial Court for fresh adjudication of the petition under Order 1 Rule 10 C.P.C. keeping in mind the observation made by the Hon'ble Supreme Court in ***Sudhamayee Pattnaik and others*** (Supra).

9. Since this order has been passed without issuing notice to the Opposite Parties, they are at liberty to seek variation of the same, if they feel aggrieved.

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

(K.R. Mohapatra)
Judge

bks