A.F.R.

IN THE HIGH COURT OF ORISSA AT CUTTACK

C.M.P. No.373 of 2024

(In the matter of an application under Article 227 of the Constitution of India)

Trilochan Mangaraj .... ***Petitioner***

-versus-

Rasabihari Pradhan and others .... ***Opposite Parties***

Appeared in this case:-

For Petitioner : Mr. D. Mohapatra, Sr. Advocate
assisted by Mr. J. Barik, Advocate

For Opposite Parties : Mr. B. Bhuyan, Sr. Advocate
assisted by Ms. S. Sahoo, Advocate
(For the Opposite Party Nos.1 to 4)

CORAM:
JUSTICE A.C. BEHERA

JUDGMENT
Date of hearing : 16.03.2026 / date of judgment : 10.04.2026

A.C. Behera, J. This Civil Miscellaneous Petition under Article 227 of the Constitution of India, 1950 has been filed by the petitioner against the Opposite Parties praying for quashing(setting aside) the impugned order dated 03.08.2022 (Annexure-4) passed in I.A. No.01 of 2022 arising out of C.S. No.1424 of 2022 by the learned Civil Judge(Junior Division), Bhubaneswar and the impugned judgment dated 29.09.2023(Annexure-5)

passed in FAO No.102 of 2022 by the learned 5th Additional District Judge, Khurda at Bhubaneswar.

2. The factual backgrounds of this Civil Miscellaneous Petition, which prompted the petitioner for filing the same is that, the petitioner being the plaintiff filed a suit vide C.S. No.1424 of 2022 in the court of learned Civil Judge(Jr. Division), Bhubaneswar against the Opposite Parties arraying them as defendants praying for injuncting them(defendants) permanently from entering into the suit properties and to injuct them(defendants/Opposite Parties) from making construction thereon.

3. In that suit vide C.S. No.1424 of 2022, the petitioner(plaintiff) filed an Interlocutory Application vide I.A. No.01 of 2022 under Order-39, Rule-1 and 2 read with Section 151 of the C.P.C., 1908 against the defendants arraying them(defendants) as Opposite Parties praying for restraining them(Opposite Parties) temporarily from entering into the suit properties and from making any construction on the suit properties till the final disposal of the suit vide C.S. No.1424 of 2022 stating that, the properties under Sabik Khata No.76 were recorded in 1962 settlement in the names of Nityananda Samal and Kshetrabasi Samal both are the sons of Late Narrotam Samal, Sarat Chandra Mangaraj son of Late

Banchhanidhi Mangaraj, Kunja Bewa wife of Madan Samal and Bhagirathi Mangaraj son of Bidyadhar.

The suit properties under Hal Khata No.164 corresponds to Sabik Khata No.76 of 1962 settlement. The properties under Hal Khata No.164 were recorded in the names of the successors of the recorded tenants of 1962 settlement along with two purchasers thereof.

The Opposite Parties are the purchasers of the properties of Hal Khata No.164 from different share-holders. Although Opposite Party No.1 has purchased and recorded his name through mutation, but, his said purchase and mutation was not within the knowledge of the petitioner.

The Opposite Party No.1 has also taken power of attorney from Opposite Party Nos.2 to 4 in respect of the suit properties.

The Opposite Party nos.2 to 4 are also the purchasers of the suit properties. They(Opposite Party Nos.2 to 4) have executed power of attorney in favour of the Opposite Party No.1 in respect of the suit properties. After managing to record the names of the Opposite Parties in respect of the suit properties in their favour, when they(Opposite Parties) tried to take possession of the suit properties forcefully and when, the Opposite Party No.1 cut big Mango tree from Plot No.308 and engaged

huge machinery and labourers for construction of building on the suit properties and dug plinth and declared that, he along with the other Opposite Parties will make construction on the same, then, the petitioner filed the suit vide C.S. No.1424 of 2022 against the Opposite Parties praying for permanent injunction as well as I.A. for temporary injunction against the Opposite Parties in order to restrain the Opposite Parties temporarily from entering into the suit properties and also from making any construction on the same till the final disposal of the suit vide C.S. No.1424 of 2022.

4. Having been noticed from the learned trial court in I.A. No.01 of 2022, all the Opposite Parties filed their objections separately taking their identical stands challenging the prayer for temporary injunction of the petitioner on the grounds that, all the jointly recorded tenants of suit Sabik Khata No.76 had partitioned the properties under that Sabik Khata between them in writing on dated 07.11.1995 through a mutual partition and on the basis of the such mutual partition, the allotted properties of Sarat Chandra Mangaraj, Chandradwaja Mangaraj, Iswar Mangaraj and Maheswar Mangaraj were sold by them through different sale deeds in favour of the Opposite Parties and accordingly, they(Opposite Parties) are the owners of the suit properties after purchasing the same from the above rightful owners, in which, the petitioner has no interest and

possession and they(Opposite Parties) have already mutated their purchased properties, i.e., suit properties to their names. They(Opposite Parties) have also made constructions on their purchased suit properties after obtaining necessary permission from Bhubaneswar Development Authority(BDA), ORERA etc. by investing a lot of money and the construction work thereof have already been progressed substantially and they(Opposite Parties) have already received part amount from the intending purchasers to sell their intended Duplexes. For which, the petitioner has no locus standi to file the Interlocutory Application in order to injunct them(Opposite Parties) temporarily. The petitioner has filed the suit and I.A. only in order to extract money from them(Opposite Parties). Therefore, the I.A. filed by the petitioner is liable to be dismissed.

5. After hearing from both the sides, learned Civil Judge(Jr. Division). Bhubaneswar dismissed to the I.A. No.01 of 2022 of the petitioner on dated 03.08.2022(Annexure-4) on contest against the Opposite Parties assigning the reasons that,

"when the petitioner himself has admitted that, a partition suit vide C.S. No.1385 of 2013 filed by the mother of the Opposite Party Nos.2 to 4 in respect of the suit properties is pending in the court of the learned Civil Judge(Sr. Division), Bhubaneswar, wherein, he(petitioner) in I.A. No.01 of 2022 is a party as defendant no.4 and when, the fact regarding the pendency of the suit for partition

vide C.S. No.1385 of 2013 in respect of the suit properties is evident from the certified copy of the plaint of the said suit for partition vide C.S. No.1385 of 2013 and properties involved in the present suit vide C.S. No.1424 of 2022 are also involved as Schedule-B properties in the earlier suit for partition vide C.S. No.1385 of 2013 and when, it is the contention of the petitioner that, the Opposite Parties are the purchasers from the co-sharers and when, a suit for partition vide C.S. No.1385 of 2013 involving the properties of the I.A. at hand is pending in the court of learned Civil Judge(Sr. Division), Bhubaneswar, then, the petitioner could have taken appropriate step seeking relief against the Opposite Parties in that suit vide C.S. No.1385 of 2013 instead of approaching the learned Civil Judge(Jr. Division), Bhubaneswar by filing suit vide C.S. No.1424 of 2022 and when he(petitioner) has filed the suit vide C.S. No.1424 of 2022 for the self-same properties seeking temporary injunction between the self-same parties, then, in view of the provisions of law envisaged in Section 41(h) of the Specific Relief Act, 1963, the petitioner is not entitled to get any relief in this I.A. Because, he could have approached for the equally efficacious relief in the earlier suit for partition vide C.S. No.1385 of 2013. Therefore, the petitioner is not entitled to get any relief of temporary injunction. For which, I.A. No.01 of 2022 filed by the petitioner is dismissed."

6. On being dissatisfied with above impugned order of rejection to the I.A. No.01 of 2022 passed by the learned Civil Judge(Jr. Division), Bhubaneswar, he(petitioner) challenged the same preferring FAO No.102

of 2022 under Order-43, Rule-1(r) of the C.P.C., 1908 before the appellate court being the appellant against the Opposite Parties arraying them(Opposite Parties) as respondents.

7. After hearing from both the sides, learned 5th Additional District Judge, Khurda at Bhubaneswar dismissed to that FAO No.102 of 2022 of the petitioner as per its judgment dated 29.09.2023(Annexure-5) confirming the dismissal of the I.A. No.01 of 2022 passed by the learned Civil Judge(Jr. Division), Bhubaneswar assigning the reasons that,

"when the petitioner/appellant has admitted that, another suit for partition between them(parties) on being filed by the mother of the Opposite Party Nos.2 to 4 vide C.S. No.1385 of 2013 is sub-judice and when, prima facie shows that, Opposite Parties have purchased suit schedule properties and when, they(Opposite Parties) have mutated their purchased properties to their names and they have started construction works over their purchased separately recorded suit properties after obtaining permission from B.D.A. and ORERA investing a lot of money and their such constructions have been progressed substantially and when, from the RoRs in respect of the purchased properties of the Opposite Parties are going to show that, they are in possession of their purchased suit properties, then at this juncture, dismissal to the prayer of the Interlocutory Application vide I.A. No.01 of 2022 under Order-39, Rules-1 and 2 read with Section 151 of the C.P.C., 1908 passed by

the learned trial court is not erroneous. For which, the question of interfering with the same does not arise."

8. On being aggrieved with the aforesaid dismissal order passed on dated 03.08.2022(Annexure-4) in I.A. No.01 of 2022 as well as judgment of dismissal passed on dated 29.09.2023(Annexure-5) in FAO No.102 of 2022, he(petitioner) challenged the same by filing this Civil Miscellaneous Petition under Article 227 of the Constitution of India praying for quashing the impugned order dated 03.08.2022(Annexure-4) passed in I.A. No.01 of 2022 as well as impugned judgment dated 29.09.2023 (Annexure-5) passed in FAO No.102 of 2022.

9. I have already heard from the learned senior counsel for the petitioner and the learned senior counsel for the Opposite Parties.

10. Learned senior counsel for the petitioner relied upon the following judgments:-

(i) In a case between ***Smt. Jagadishwari vrs. Smt. M. Revathi and another*** decided on 19.01.2024 in ***MFA No.6094 of 2023(Karnatak High Court)***

(ii) In a case between ***Julien Educational Trust vrs. Sourendra Kumar Roy and others*** : reported in ***(2010) 1 SCC-379***.

11. As per the submissions of the learned counsels of both the sides, the crux of this Civil Miscellaneous Petition is that,

whether, refusal to the prayer for temporary injunction sought for by the petitioner in I.A. No.01 of 2022 arising out C.S. No.1424 of 2022 and the confirmation to the same by the learned appellate court in FAO No.102 of 2022 on the ground of non-seeking the same relief by the petitioner in the earlier suit vide C.S. No.1385 of 2013 pending between them(parties) in respect of the suit properties in the court of learned Civil Judge(Sr. Division), Bhubaneswar in view of the provisions of law envisaged in Section 41(h) of the Specific Relief Act, 1963 as well as on the ground of substantial progress of the construction works on the suit properties recorded in the names of the Opposite Parties in separate RoRs is sustainable under law?

12. It is the settled propositions of law that,

exercise of supervisory jurisdiction under Article 227 of the Constitution of India, 1950 is not available to the High Court to correct mere errors of fact or law, unless the errors manifest and apparent on the face of the proceedings, such as, when the same is based on mere ignorance and utter disregard of the provisions of law and grave injustice as occasioned thereby.

High Court under Article 227 of the Constitution of India, 1950 cannot exercise its power as an appellate court or substitute its own judgment in place of that of sub-ordinate court to correct an error which is not apparent on the face of the record. Because, the High Court is not vested with unlimited prerogative to correct all kinds of hardship or wrong decisions made within the limits of jurisdiction of the sub-ordinate court.

Therefore, the High Court in exercise of its jurisdiction under Article 227 of the Constitution of India, 1950, ought not to have interfered with the findings arrived at by two courts below.

13. On this aspect, the propositions of law has already been clarified in the ratio of the following decisions:-

(i) In a case between ***Surya Dev Rai vrs. Ram Chander Rai and others*** : reported in ***(2003) 6 SCC-675*** that,

Exercise of supervisory jurisdiction under Article 227 of the Constitution of India, 1950 is not available to correct mere errors of fact or of law unless the following requirements are satisfied : (i) error is manifests and apparent on the face of the proceedings such as it is based on clear ignorance or utter disregard of the provisions of law and (ii) a grave injustice or gross failure of justice has occasioned thereby.(Para-38)

(ii) In a case between ***M/s. Estralla Rubber vrs. Dass Estate (P) Ltd.*** : reported in ***(2001) 8 SCC-97*** that,

High Court while acting under Article 227 of the Constitution of India, 1950 cannot exercise its power as an appellate court or substitute its own judgment in place of that of the sub-ordinate court to correct an error, which is not apparent on the face of record, because, the High Court is not vested with any unlimited prerogative to correct all kind of hardship or wrong decisions made with the limits of the jurisdiction of the sub-ordinate courts or Tribunals.(Para-6)

(iii) In a case between ***S.P. Deshmukh vrs. Shah Nihal Chand Waghajibai Gujarati :*** reported in ***(1977) 3 SCC-515*** that,

High Court in exercise of its jurisdiction under Article 227 of the Constitution of India, 1950 ought not to have interfered with the findings arrived at by two Courts below.

(iv) In a case between ***Kesharlal H. Pardeshi vrs. Vithal S. Patole(dead) by LRs*** : reported in ***(2005) 10 SCC-249*** that,

High Court in exercise its jurisdiction under Article 227 of the Constitution of India, 1950 ought not to have interfered with the findings arrived at by the two Courts below.

14. When, the scope of interference of the High Court in exercising its supervisory jurisdiction under Article 227 of the Constitution of India, 1950 is very very limited, then, in view of the principles of law enunciated by the Apex Court in the ratio of the aforesaid decisions, it will be seen,

whether, there is any manifest or apparent error on the face of the impugned orders passed by the learned trial court and the learned appellate court and whether, the said impugned order and judgment vide Annexures-4 and 5 respectively have been passed on clear ignorance or utter disregard to the provisions of law and whether, a grave injustice or grave failure of justice has been caused in passing the said order and judgment respectively.

15. It is the admitted case of the parties that, in respect of the self-same properties between the parties, a partition suit vide C.S. No.1385 of 2013

between the parties is sub-judice/pending in the court of learned Civil Judge(Jr. Division), Bhubaneswar since the year 2013.

16. It is the settled proposition of law that, in a suit for partition like C.S. No.1385 of 2013, the status of all the parties are same and inter-changeable in nature. There was/is no bar under law for the petitioner for seeking similar relief in the earlier partition suit vide C.S. No.1385 of 2013, but, without seeking any relief in that earlier suit vide C.S. No.1385 of 2013, the petitioner filed an another suit in the year 2022 vide C.S. No.1424 of 2022 in respect of the self-same properties and filed an Interlocutory Application vide I.A. No.01 of 2022 praying for temporary injunction.

To which, learned trial court rejected/dismissed as per the impugned order vide Annexure-4 applying the provisions of law envisaged in Section 41(h) of the Specific Relief Act, 1963 assigning the reasons that,

when equally efficacious remedy was available for the petitioner in the earlier suit for partition vide C.S. No.1385 of 2013, but, he has not availed the same, then, the relief sought for by him in the subsequent suit vide C.S. No.1424 of 2022 is hit and barred under Section 41(h) of The Specific Relief Act, 1963.

The aforesaid observations of the learned trial court refusing the prayer for temporary injunction of the petitioner in I.A. No.01 of 2022 applying the provisions of law envisaged under Section 41(h) of the Specific Relief Act is not erroneous.

On this aspect, the propositions of law has already been clarified in the ratio of the following decisions:-

(i) In a case between ***The Municipal Corporation of Delhi vrs. Suresh Chandra Jaipuria and another*** : reported in ***AIR 1976 SC-2621*** that,

Relief of injunction shall not granted, if equally efficacious relief can certainly be obtained by any other usual mode of proceedings.

(ii) In a case between ***M/s. India Navigatgion Company vrs. Haryana State Industrial Development Corporation*** : reported in ***2006(2) Civil Court Cases-122(P&H)*** that,

Injunction cannot be granted, when equally efficacious relief could be obtained by any other usual mode of proceeding, which might have been available to the plaintiff except filing the suit for declaration.

(iii) In a case between ***Ratnagiri Nagar Parisad vrs. Gangaram Narayan Ambekar and others*** : reported in ***2021(1) Civil Court Cases-304(SC)*** that,

Relief for injunction cannot be granted, when equally efficacious relief can certainly be obtained by any other usual mode of proceeding except in case of breach of trust.

(iv) In a case between ***State of U.P. and another vrs. Tara Singh Jaiswal*** : reported in ***2013(1) Civil Court Cases-395(Allahabad) (D.B.)*** that,

The court cannot grant relief sought for by the plaintiff, when equally efficacious relief can be obtained by any other usual mode proceeding.

(v) In a case between ***Kisan Singh vrs. Sucha Singh*** : reported in ***2008(2) Civil Court Cases-755(P&H)*** that,

Suit for permanent injunction is not maintainable, when equally efficacious remedy is available for the plaintiff by other usual mode of proceeding.

For which, plaintiff could have asserted his right over the property by filing a suit for partition, but, instead of which, plaintiff filed a suit for injunction. Held. Suit for injunction barred by virtue of Section 41(h) of the Specific Relief Act, 1963.

17. Here in this matter at hand, when, without seeking relief, i.e., temporary injunction in the earlier suit for partition vide C.S. No.1385 of 2013, the petitioner sought for the same relief by filing subsequent suit in the year 2022 with I.A. No.01 of 2022, then, in view of the principles of law enunciated in the ratio of aforesaid decisions, the petitioner is not entitled for any relief in I.A. No.01 of 2022. For which, the dismissal to the I.A. No.01 of 2022 of the petitioner passed by the learned trial court and confirmation of the same by the learned appellate court on such ground cannot be held as erroneous.

18. The decision relied on behalf of the petitioner between ***Smt. Jagadishwari vrs. Smt. M. Revathi and another*** decided on 19.01.2024 in ***MFA No.6094 of 2023(Karnatak High Court)*** is not applicable to this matter at hand on facts.

Because, as per Para No.32 of the said decision, in the earlier suit for partition, the persons, those were the parties in the subsequent suit for injnction, they were not the parties in the earlier suit for partition.

19. So far as the other ground of refusal to the prayer of temporary injunction is that, when constructions have already been raised by the Opposite Parties in their purchased recorded land to a substantial extent, then, there is no justification under law to stop such construction also cannot be held as erroneous.

Because, when the construction of a building has been made up to a considerable extent, then, the same cannot be in the interest of justice to stop its further construction, because, a half constructed house is beneficial to no party.

20. Therefore, the balance of convenience leans in favour of completion of the construction, rather than obstruction of construction.

On this aspect, the propositions of law has already been clarified in the ratio of the following decisions:-

(i) In a case between ***Khiroda Prasad Routray vrs. Smt. Satyabhama Routray and others*** : reported in ***1986(II) OLR NOC-22*** that,

Order of ad interim injunction prohibiting the defendant from completing a half constructed house passed in Order-39, Rules-1 and 2 of the C.P.C. was vacated, because, a half constructed house is beneficial to no party.

(ii) In a case between ***Bholeswar Sahu and another vrs. Rama Chandra Behera and another*** : reported in ***90(2000) CLT-294(Para-6)*** that,

When a building has been constructed upto a considerable extent, then, it may not be in the interest of justice to stop further construction. It cannot be said that, balance of convenience lies in favour of the party opposing such construction.(Para-6)

(iii) In a case between ***Assa Manayami vrs. Pawan Kumar Dugat*** : reported in ***2025(2) Civil Court Cases-535(Rajasthan)*** that,

When, construction of wall is already over and only finishing work is remain, then, petition under Order-39, Rules-1 and 2 read with Section 151 of the C.P.C. was rightly rejected.(Para-6)

21. The decision relied on behalf of the petitioner reported in ***(2010) 1 SCC-379*** is also not applicable to this matter on facts.

Because, the nature of suit in the said decision was a suit for specific performance of contract and construction works were not progressed.

22. As per the discussions and observations made above, when, the concurrent observations of the learned trial court as well as learned appellate court as per the impugned order and judgment vide Annexures-4 and 5 respectively are neither unreasonable nor erroneous, then at this juncture, the question of interfering with the same through this Civil Miscellaneous Petition filed by the petitioner/plaintiff does not arise.

23. As such, there is no merit in the Civil Miscellaneous Petition filed by the petitioner. The same must fail.

24. In result, this Civil Miscellaneous Petition filed by petitioner/plaintiff is dismissed on contest.

25. As such, this Civil Miscellaneous Petition filed by the petitioner is disposed of finally.

(A.C. Behera)
Judge

Orissa High Court, Cuttack
The 10th of April, 2026/ Jagabandhu, P.A.

Signature Not Verified
Digitally Signed
Signed by: JAGABANDHU BEHERA
Designation: Personal Assistant
Reason: Authentication
Location: OHC, CUTTACK
Date: 15-Apr-2026 20:07:06