A.F.R.

IN THE HIGH COURT OF ORISSA AT CUTTACK

CMP No.1482 of 2025

CNR No. ODHC010630952025

(In the matter of an application under Article 227 of the Constitution of India, 1950).

Kaibalya Mishra and Ors. **....** ***Petitioner (s)***

-versus-

Sankar Mishra and Ors. **....** ***Opposite Party (s)***

Advocates appeared in the case through Hybrid Mode**:**

For Petitioner (s) : *Mr. Sourav Suman Bhuyan, Adv.*

For Opposite Party (s) : *Mr. Soumya Mishra, Adv.*

CORAM:
HON'BLE DR. JUSTICE SANJEEB K PANIGRAHI

DATE OF HEARING:-11.08.2026
DATE OF JUDGMENT:-30.10.2026

Dr. Sanjeeb K Panigrahi, J.

1. The dispute concerns Schedule-B property situated in Mouza Gadaitapokhari, District Puri, traced to Sabik Plot No. 806 under Sabik Khata No. 381, measuring Ac.0.07. The property subsequently corresponded to L.R. Plot No. 655 under L.R. Khata No. 510 and Consolidation Plot No. 896 under Khata No. 16, Chaka No. 177, measuring Ac.0.04. The schedule also refers to Plot No. 896/3898 under Mutation Khata No. 938/407, measuring Ac.0.0333 out of Ac.0.04. The controversy relates to the parties' competing claims over this land and

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the construction undertaken by Kaibalya Kumar Mishra, the present petitioner No.1.

I. FACTUAL MATRIX OF THE CASE:

2. The brief facts of the case are as follows:

(i) The pleadings trace the property through a registered sale deed dated 10.01.1931 executed in favour of Laxman Mishra. He also purchased Ac.0.41 pertaining to Sabik Plot No. 803 by a registered sale deed dated 11.03.1942. The plaintiffs trace their claim through a subsequent conveyance of the aggregate Ac.0.48 in favour of Moti Devi, wife of Ratnakar Mishra, identified in the plaint as registered sale deed No. 789 dated 20.02.1953. Moti Devi and Ratnakar Mishra died leaving their sons, Duryodhan Mishra and Sankar Mishra. Opposite party Nos. 1 to 5 claim through this branch of the family and are the plaintiffs in the civil suit.

(ii) During consolidation operations, proceedings were undertaken concerning the area and recording of the property. In the final consolidation records published in 1989, Plot No. 899, measuring Ac.0.40, stood recorded in the names of Duryodhan Mishra and Sankar Mishra, whereas Plot No. 896, measuring Ac.0.04, stood recorded in the name of Madhusudan Mishra. Duryodhan Mishra and Sankar Mishra instituted Consolidation Revision Case No. 1421 of 1990. That revision was dismissed on 13.08.2001 on the ground that an appeal had not been preferred against the order passed in the consolidation objection proceeding. The

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recording of Plot No. 896 and its subsequent mutation form part of the present dispute.

(iii) The suit land was mutated in favour of Gopi alias Gopinath Mishra and Nishamani Mishra through Mutation Case No. 448 of 1998 under Mutation Khata No. 938/58. Their successors subsequently executed registered sale deed dated 19.04.2024 in favour of petitioner No. 1, who obtained mutation under Khata No. 938/407. In 2024, Sankar Mishra and the legal heirs of Duryodhan Mishra also instituted Consolidation Revision Case No. 79 of 2024 concerning the suit land and other property. During the pendency of that proceeding, a dispute arose over construction on the land. Opposite party Nos. 1 to 5 consequently instituted C.S. No. 37 of 2025 before the Civil Judge, Junior Division, Nimapara, seeking permanent injunction, together with I.A. No. 18 of 2025 seeking temporary restraint against construction.

(iv) By order dated 23.04.2025, the trial court directed maintenance of status quo but permitted defendant No. 1 to complete the existing construction to roof level, subject to restrictions and an undertaking against claiming equity. The plaintiffs initially challenged that order in CMP No. 741 of 2025, which was disposed of on 15.07.2025 with liberty to pursue the appellate remedy. They thereafter preferred FAO No. 26 of 2025. By judgment dated 22.08.2025, the Additional District Judge, Nimapara, set aside the trial court's order and restrained

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construction changing the nature and character of Schedule-B property till disposal of the suit. The defendants have challenged that appellate judgment in the present CMP under Article 227 of the Constitution.

Being aggrieved by the aforesaid facts and circumstances, the Petitioner has been constrained to approach this Court by way of the present petition.

II. SUBMISSIONS ON BEHALF OF THE PETITIONER:

3. The learned counsel for the Petitioner earnestly made the following submissions in support of his contentions:

(i) The petitioners contend that the appellate court improperly interfered with a reasoned exercise of discretion by the trial court. According to them, the trial court considered the prima facie case, balance of convenience and irreparable injury before permitting only limited completion of the existing structure. Although it found a prima facie case in favour of the plaintiffs, it assessed comparative hardship in favour of allowing the existing construction to be completed. The petitioners submit that the appellate court substituted its own assessment without establishing perversity, arbitrariness or disregard of settled principles in the trial court's approach. They rely upon ***Skyline Education Institute v. S.L. Vaswani***[1] in support of this contention.

[1] (2010) 2 SCC 142

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(ii) The petitioners assert that petitioner No. 1 purchased the property for valuable consideration under the registered sale deed dated 19.04.2024, obtained possession and secured mutation in his favour. They contend that the conveyance has not been challenged in any proceeding seeking its cancellation or setting aside. According to them, the sale deed and existing records support petitioner No. 1's entitlement to possess and use the property. They further submit that the earlier consolidation revision was dismissed in 2001 and that the subsequent revision of 2024, stated in their written submissions to be yet to be admitted, could not by its mere institution negate their title or justify preventing use of the land.

(iii) The petitioners submit that the residential house had already been substantially constructed up to lintel level and that photographs showing its condition were produced before the trial court. They contend that preventing roof casting would leave the structure incomplete and cause greater inconvenience and financial loss than the limited completion permitted by the trial court would cause to the plaintiffs. They emphasise that the permission did not extend to fresh construction or additional structures. Relying upon decisions including ***Graftek Pvt. Ltd. v. Shri Lord Lingaraj Mahaprabhu***[2], they submit that the existing stage of construction and the consequences of leaving it

[2] AIR 1999 Ori 49

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unfinished should receive due weight when assessing comparative hardship.

(iv) The petitioners also rely upon their undertaking to remain bound by the final adjudication, refrain from claiming equity and remove the construction at their own expense if required. They state that this safeguard was offered before the courts below and reiterated before the High Court. According to them, the undertaking protects the opposite parties against the consequences of an adverse determination of the petitioners' rights, while allowing completion of the existing building. They contend that the appellate court failed to adequately consider this undertaking and the limited nature of the permission granted by the trial court.

(v) The petitioners further contend that the suit seeks permanent injunction simpliciter and that an unconditional restraint at the interlocutory stage substantially grants the plaintiffs their final relief before adjudication. They maintain their objection under Section 51 of the consolidation enactment and question the civil court's ability to disregard the consolidation records. They also invoke the 2023 amendment omitting Chapter V and introducing Section 36-A, contending that their registered conveyance could not be disregarded without adjudication of its validity. On these grounds, they seek setting aside of the appellate judgment and restoration of the trial court's arrangement.

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III. SUBMISSIONS ON BEHALF OF THE OPPOSITE PARTIES:

4. *Per contra*, the learned counsel for the Opposite Parties earnestly made the submission that the present CMP deserves to be rejected in limine.

(i) Opposite party Nos. 1 to 5 contend that their predecessor, Moti Devi, purchased the suit property from Laxman Mishra under the registered conveyance dated 20.02.1953. According to them, after that transfer, Laxman Mishra retained no interest in the property capable of passing to his successors. They therefore submit that the persons who subsequently conveyed the land to petitioner No. 1 possessed no transferable title. Invoking the principle that a person cannot convey a better title than he possesses, they contend that the sale deed dated 19.04.2024 does not confer lawful ownership upon petitioner No. 1 or justify construction over the disputed property.

(ii) The opposite parties submit that the consolidation recording and subsequent mutation relied upon by the petitioners are erroneous and cannot independently create title. They point to Consolidation Revision Case No. 79 of 2024, instituted for correction of the records, and contend that the dispute concerning the land remains pending before the competent authority. According to them, the civil suit was necessary because the consolidation authorities cannot grant the injunction required to prevent alteration of the property. They submit that the land must be preserved while their claim is adjudicated, rather than

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allowing the disputed entries and later conveyance to become the basis for further construction.

(iii) The opposite parties contend that the trial court's permission to complete construction defeated its simultaneous direction to maintain status quo. They emphasise that the trial court itself found a prima facie case in their favour and considered preservation of the property necessary. Since the principal relief in the suit is prevention of construction changing the nature and character of the land, they submit that permitting completion during the suit would frustrate that relief before adjudication. They rely upon ***Deoraj v. State of Maharashtra***[3] to support their contention that withholding interim protection can, in appropriate circumstances, render the ultimate remedy ineffective.

(iv) On comparative hardship, the opposite parties contend that both courts below recognised a prima facie case in their favour and that construction would materially prejudice their enjoyment of the land if they ultimately succeed. They submit that further building activity would change the property and necessitate additional proceedings for effective relief. They dispute that expenditure upon construction, by itself, establishes irreparable injury to the petitioners and point out that petitioner No. 1 did not plead in his objection that he was residing upon the suit property. According to them, postponing further construction

[3] (2004) 4 SCC 697

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causes less prejudice than permitting alteration of the disputed land.

(v) The opposite parties further submit that an undertaking to demolish or refrain from claiming equity does not adequately replace preservation of the property. They contend that such conditions would leave them exposed to further disputes if their claim succeeds. Relying upon ***Maharwal Khewaji Trust v. Baldev Dass***[4], they submit that alteration of disputed property should not be permitted without an established case of irreparable loss warranting that course. They accordingly support the appellate judgment as an order preserving the subject matter of the suit and seek dismissal of the CMP.

IV. ANALYSIS OF THE FINDINGS OF THE TRIAL COURT:

5. The Learned Trial Court made the following observation:

(i) While deciding I.A. No. 18 of 2025 on 23.04.2025, the trial court identified the requirements of a prima facie case, balance of convenience and irreparable injury as the considerations governing temporary injunction. Referring to ***Dalpat Kumar v. Prahlad Singh***[5], it stated that the court must examine whether a serious disputed question requires adjudication, whether protection is necessary against injury before determination of the legal right, and whether the comparative hardship from withholding injunction exceeds that likely to result from granting

[4] (2004) 8 SCC 488
[5] AIR 1993 SC 276

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it. The court considered the application under separate discussions concerning the prima facie case and comparative hardship.

(ii) In its discussion of the prima facie case, the trial court referred to the plaintiffs' asserted chain of acquisition, the conveyance in favour of Moti Devi, the consolidation objection proceedings, the records published in 1989 and the subsequent revisions. It recorded the plaintiffs' complaint that the disputed land had been wrongly entered in the name of Madhusudan Mishra and subsequently mutated in favour of the defendants' predecessors. The court observed that mutation does not confer or relinquish title and concluded, upon the documents before it, that the plaintiffs had established a prima facie case.

(iii) While considering balance of convenience and irreparable injury, the trial court observed that Plot No. 899 was undisputed, whereas Plot No. 896 was disputed. It stated that the order of the consolidation authority continued to hold good unless set aside by the Commissioner. It also noted that the property stood recorded in the name of defendant No. 1 under Mutation Khata No. 938/407. Referring to the photographs submitted by him, the court observed that the house had been constructed up to lintel level and that a restraint against construction would cause him greater loss than the plaintiffs would suffer if the limited work were permitted.

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(iv) The trial court referred to decisions concerning the continued effect of consolidation records, completion of partially constructed houses and undertakings against claiming equity. It noted the proposition that a half-constructed house benefits neither party and referred to authority requiring the person undertaking construction to furnish an undertaking. The court stated that the dispute between the parties would be resolved through evidence and arguments. It also referred to ***Dorab Cawasji v. Coomi Sarah***[6] while discussing an interim arrangement balancing the injury and prejudice likely to be suffered by the respective parties and preserving the subject matter pending final determination.

(v) The trial court allowed the interlocutory application on contest without costs and directed both parties to maintain status quo over the suit property till disposal of the suit. It nevertheless permitted defendant No. 1 to carry the existing construction to roof level and undertake other necessary work therein. The permission expressly excluded fresh construction or any structure beyond the one stated to have already been commenced. The court directed defendant No. 1 to furnish an undertaking that he would not claim equity if the final adjudication of the suit went against him.

[6] (1990) 2 SCC 117

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V. COURT'S REASONING AND ANALYSIS:

6. Heard Learned Counsel for the parties and perused the documents placed before this Court.

7. The controversy before this Court lies in a narrow compass. The question is not whether the plaintiffs or the defendants have ultimately established title over Schedule-B property. Nor is this Court required, in exercise of jurisdiction under Article 227 of the Constitution, to undertake a fresh evaluation of the rival chains of title. The challenge is to the judgment of the learned Additional District Judge, Nimapara in FAO No.26 of 2025, whereby the appellate court interfered with the arrangement made by the learned trial court and restrained further construction changing the nature and character of Schedule-B property during pendency of the suit.

8. The limits of jurisdiction under Article 227 are well settled. In ***Garment Craft v. Prakash Chand Goel***[7], the Supreme Court held that the High Court, while exercising supervisory jurisdiction, does not act as a court of first appeal and cannot reappreciate or reweigh the evidence merely for substituting its own conclusion. Interference is warranted where the subordinate court has acted outside the bounds of its authority, disregarded fundamental principles of law, or arrived at a finding so perverse that it cannot reasonably be sustained. The Court held as follows:

> *"Having heard the counsel for the parties, we are clearly of the view that the impugned order is contrary to law and cannot be sustained for several reasons, but primarily for*

[7] (2022) 4 SCC 481

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deviation from the limited jurisdiction exercised by the High Court under Article 227 of the Constitution of India. The High Court exercising supervisory jurisdiction does not act as a court of first appeal to reappreciate, reweigh the evidence or facts upon which the determination under challenge is based. Supervisory jurisdiction is not to correct every error of fact or even a legal flaw when the final finding is justified or can be supported. The High Court is not to substitute its own decision on facts and conclusion, for that of the inferior court or tribunal. The jurisdiction exercised is in the nature of correctional jurisdiction to set right grave dereliction of duty or flagrant abuse, Celina Coelho Pereira (Ms) and Others v. Ulhas Mahabaleshwar Kholkar and Others, (2010) 1 SCC violation of fundamental principles of law or justice. The power under Article 227 is exercised sparingly in appropriate cases, like when there is no evidence at all to justify, or the finding is so perverse that no reasonable person can possibly come to such a conclusion that the court or tribunal has come to. It is axiomatic that such discretionary relief must be exercised to ensure there is no miscarriage of justice."

9. There is a further limitation arising from the nature of the order under challenge. An appellate court considering an order of temporary injunction does not substitute its discretion merely because another view is possible. In ***Skyline Education Institute (India) (P) Ltd.*** (supra), following ***Wander Ltd. v. Antox India (P) Ltd***.[8], the Supreme Court held that appellate interference is justified where the discretion of the court of first instance has been exercised arbitrarily, capriciously or perversely, or where settled principles governing interlocutory injunction have been ignored. Where the view of the trial court is reasonably possible and rests upon objective consideration and cogent

[8] 1990 Supp SCC 727

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reasons, a different view of the appellate court would not by itself justify interference:

> *"In such appeals, the appellate court will not interfere with the exercise of discretion of the court of first instance and substitute its own discretion except where the discretion has been shown to have been exercised arbitrarily, or capriciously or perversely or where the court had ignored the settled principles of law regulating grant or refusal of interlocutory injunctions. An appeal against exercise of discretion is said to be an appeal on principle. Appellate court will not reassess the material and seek to reach a conclusion different from the one reached by the court below if the one reached by that court was reasonably possible on the material. The appellate court would normally not be justified in interfering with the exercise of discretion under appeal solely on the ground that if it had considered the matter at the trial stage it would have come to a contrary conclusion. If the discretion has been exercised by the trial court reasonably and in a judicial manner the fact that the appellate court would have taken a different view may not justify interference with the trial court's exercise of discretion."*

10. Therefore, the present CMP has to be examined at two levels. First, whether the learned appellate court had a permissible ground in law to interfere with the discretion exercised by the learned trial court. Second, whether the appellate judgment itself suffers from any jurisdictional error or manifest perversity warranting interference under Article 227. This Court is not required to choose afresh which of the two interim arrangements it would have preferred had it been deciding I.A. No.18 of 2025 in the first instance.

11. The learned trial court correctly noticed that grant of temporary injunction depends upon the existence of a prima facie case, balance of

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convenience and irreparable injury. In ***Dalpat Kumar*** (Supra), the Supreme Court explained that a prima facie case is a bona fide substantial question requiring adjudication and is not to be equated with proof of title. Even after such a case is shown, the court must assess whether the threatened injury is incapable of adequate compensation and then compare the respective hardship likely to be caused by granting or refusing the injunction. The relevant excerpts are produced below:

> *"The existence of the prima facie right and infraction of the enjoyment of his property or the right is a condition for the grant of temporary injunction. Prima facie case is not to be confused with prima facie title which has to be established, on evidence at the trial. Only prima facie case is a substantial question raised, bona fide, which needs investigation and a decision on merits. Satisfaction that there is a prima facie case by itself is not sufficient to grant injunction. The Court further has to satisfy that non-interference by the Court would result in "irreparable injury" to the party seeking relief and that there is no other remedy available to the party except one to grant injunction and he needs protection from the consequences of apprehended injury or dispossession. Irreparable injury, however, does not mean that there must be no physical possibility of repairing the injury, but means only that the injury must be a material one, namely one that cannot be adequately compensated by way of damages. The third condition also is that "the balance of convenience" must be in favour of granting injunction. The Court while granting or refusing to grant injunction should exercise sound judicial discretion to find the amount of substantial mischief or injury which is likely to be caused to the parties, if the injunction is refused and compare it with that it is likely to be caused to the other side if the injunction is granted. If on*

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weighing competing possibilities or probabilities of likelihood of injury and if the Court considers that pending the suit, the subject-matter should be maintained in status quo, an injunction would be issued. Thus the Court has to exercise its sound judicial discretion in granting or refusing the relief of ad interim injunction pending the suit."

12. In the present case, the learned trial court, upon consideration of the documents then available, expressly found a prima facie case in favour of the plaintiffs. It also recognised that Plot No.896 is the property in dispute. That finding was only interlocutory and cannot be understood as a finding of title. Nevertheless, once the court found a serious dispute concerning the very land upon which construction was being undertaken, the question whether its physical condition ought to be allowed to change required consideration in accordance with the law governing disputed immovable property.

13. On this aspect, ***Maharwal Khewaji Trust (Regd.)*** (supra), has direct relevance. There also the appellate court had permitted construction during pendency of the suit on the condition that the construction would be removed at the defendant's own risk and cost if the plaintiff ultimately succeeded. An undertaking not to claim compensation was also given before the High Court. The Supreme Court nevertheless restored the order of the trial court restraining alteration of the property. The Court held that, unless a case of irreparable loss or damage is made out, the court ought not to permit the nature of the disputed property to be changed, since such change may prejudice the party ultimately succeeding and may lead to multiplicity of proceedings. The relevant excerpts are produced below:

"Be that as it may, Mr. Sachhar is right in contending that unless and untill a case of irreparable loss or damage is made out by a party to the suit, the court should not permit the nature of the property being changed which also includes alienation or transfer of the property which may lead to loss or damage being caused to the party who may

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ultimately succeed and may further lead to multiplicity of proceedings. In the instant case no such case of irreparable loss is made out except contending that the legal proceedings are likely to take a long time, therefore, the respondent should be permitted to put the scheduled property to better use. We do not think in the facts and circumstances of this case, the lower appellate court and the High Court were justified in permitting the respondent to change the nature of property by putting up construction as also by permitting the alienation of the property, whatever may be the condition on which the same is done. In the event of the appellant's claim being found baseless ultimately, it is always open to the respondent to claim damages or, in an appropriate case, the court may itself award damages for the loss suffered, if any, in this regard. Since the facts of this case do not make out any extraordinary ground for permitting the respondent to put up construction and alienate the same, we think both the courts below, namely, the lower appellate court and the High Court erred in making the impugned orders. The said orders are set aside and the order of the trial court is restored. The appeal is allowed."

14. The principle is of particular significance here. The learned trial court directed the parties to maintain status quo but simultaneously carved out an exception allowing defendant No.1 to carry the existing construction up to roof level and to undertake necessary work therein. The directions are not inherently incapable of being reconciled, since the permission was intended as a limited exception to the order of status quo. The real question, however, is whether there was sufficient material to justify that exception.

15. The principal consideration recorded by the trial court was that photographs showed the building to have reached lintel level and that

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leaving the structure incomplete would cause greater loss to defendant No.1. Expenditure already incurred and the inconvenience resulting from postponement of further construction are undoubtedly relevant considerations. But, on the materials referred to in the orders below, no circumstance of such a nature was shown which made completion of the roof indispensable to avoid an irreparable injury incapable of being remedied later. There is also no recorded finding that defendant No.1 was residing in the structure or that non-completion of the roof would deprive him of an existing residential occupation. On the other hand, further construction would change the physical condition of the very property whose entitlement is disputed.

16. The undertaking furnished by the petitioner does not materially alter this position. An undertaking not to claim equity and to remove the construction in the event of an adverse decree is a relevant safeguard, but it is not in every case a substitute for preservation of the disputed property. ***Maharwal Khewaji Trust*** (supra) itself involved construction at the defendant's risk and an undertaking against claiming compensation, yet the Supreme Court considered preservation of the property to be the proper course. Permitting construction first and leaving its demolition to the result of the litigation may itself generate the further controversy and multiplicity which an interlocutory order should ordinarily avoid.

17. Learned counsel for the petitioners has placed reliance upon ***Graftek*** (supra) . The said decision does not lay down an inflexible proposition that construction ought to be allowed whenever an undertaking to

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restore the property is furnished. The Court there expressly held that the question depends upon the facts of each case. Significantly, the defendants therein and their predecessor had remained in possession since 1972 and 1937 respectively, construction had been made over a part of the property long before institution of the suit, and the disputed land had already lost its original agricultural character. It was in those circumstances that the balance of convenience was held to favour the defendants.

18. The present facts stand differently. Petitioner No.1 claims under a purchase dated 19.04.2024 and the construction in question is recent. The very identity and entitlement concerning Consolidation Plot No.896 are under contest. More importantly, the subsequent decision of the Supreme Court in ***Maharwal Khewaji Trust*** (supra) requires a court, in the absence of demonstrated irreparable loss, to be slow in permitting alteration of disputed property merely on the basis that construction would be at the defendant's risk. ***Graftek*** (supra) therefore cannot assist the petitioners on the facts of the present case.

19. The reliance upon ***Skyline Education Institute*** (supra) also does not persuade this Court to interfere. The principle in that precedent protects a judicial exercise of discretion from appellate substitution merely because another view is possible. The same judgment, however, expressly preserves appellate interference where the court of first instance has ignored settled principles governing interlocutory injunction. In the present case, the learned appellate court did not interfere merely because it preferred a different assessment of hardship.

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It found that, despite the prima facie case recorded in favour of the plaintiffs and the admitted dispute over the very plot, allowing construction would alter the nature and character of the property before adjudication. In view of the principle subsequently laid down in ***Maharwal Khewaji Trust*** (supra), such interference cannot be characterised as an impermissible substitution of discretion.

20. The registered sale deed dated 19.04.2024 and the subsequent mutation in favour of petitioner No.1 are certainly matters which the court adjudicating the rights of the parties cannot ignore. At the same time, their existence does not justify a conclusive finding of title in favour of petitioner No.1 at the interlocutory stage. The plaintiffs' case is not merely that the deed was irregularly executed. Their case is that the vendors of petitioner No.1 had no subsisting transferable interest in the disputed property. Whether that contention is correct must be decided in the appropriate proceeding upon the complete chain of documents and evidence.

21. Insofar as reliance is placed upon mutation, the legal position is equally clear. In ***Balwant Singh v. Daulat Singh***[9], the Supreme Court held that mutation entries do not convey or extinguish title and are relevant essentially for revenue purposes. The Court held as follows:

> *"Assuming for the sake of arguments, that Mutation No. 1348 was on the basis of misunderstanding of the judgment in the earlier proceedings, that having been allowed to remain unaltered without challenge, cannot be brushed aside as worth nothing. Anybody affected by such entries should have challenged the same as provide under the law. In the absence*

[9] (1997) 7 SCC 137

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of that, the entries cannot be ignored. Be that as it may, we have already noticed that mutation entries do not convey or extinguish any title and those entries are relevant only for the purpose of collection of land revenue. That being the position. Mutation No. 1311 cannot be construed as conveying title in favour of Balwant Singh and Kartar Singh or extinguishing the title of Durga Devi in the suit property. Consequently, the title to the suit property always vested with the widow notwithstanding the Mutation No. 1311. Viewed in this manner, the decision in the earlier proceedings namely, decree in Suit No. 194/55 even assuming operates as res judicata, will not be of any avail to the contesting respondents, (plaintiffs) in the present suit because the reliefs sought in the prior proceeding was for a simple declaration that the `mutation gift' of 1954 would not affect the reversionary rights of reversioners. As noticed already, mutation entires will not convey or extinguish title in the property. Therefore, under Mutation No. 1311 neither Balwant Singh and Kartar Singh acquired title nor Durga Devi's title in the property got extinguished. The earlier court proceedings did not and could not convey title in favour of reversioner, as the relief sought was for a simple declaration as mentioned above. If no title as such was passed on under the alleged `mutation gift', the limited right of the widow in the property would get enlarged on the coming into force of the Hindu Succession Act, 1956."

22. The same principle was reiterated in ***Suraj Bhan v. Financial Commissioner***[10], where the Court held that an entry in the record of rights does not, by itself, confer ownership. The learned trial court was therefore right in declining to treat mutation as conclusive of title. Equally, nothing in the present order should be read as holding the

[10] (2007) 6 SCC 186

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existing consolidation or mutation entries to be invalid. Their legal effect remains open for adjudication in the appropriate proceeding.

23. Much argument has been addressed regarding Consolidation Revision Case No.79 of 2024, the earlier revision dismissed in 2001, and the objection under Section 51 of the consolidation enactment. These matters bear upon the ultimate forum and relief available to the parties. It is neither necessary nor appropriate in the present proceeding under Article 227, arising from an interlocutory injunction, to finally pronounce upon the competing title or upon the maintainability of every relief claimed in the suit. The petitioners' objection under Section 51 shall remain open to be considered by the learned trial court in accordance with law, uninfluenced by any observation made while deciding the interlocutory application.

24. For the same reason, pendency of Consolidation Revision Case No.79 of 2024 cannot at this stage be treated either as establishing the plaintiffs' title or as extinguishing the effect of the existing consolidation record. Its pendency only reinforces that the competing claim concerning the property has not attained a final adjudication. The order under challenge merely preserves the physical condition of the disputed land while those rights are adjudicated. It does not amount to correction of the consolidation record.

25. The submission based upon the Odisha Consolidation of Holdings and Prevention of Fragmentation of Land (Amendment) Act, 2023 also does not alter the interlocutory position. The 2023 Amendment omitted Chapter V of the principal Act and inserted Section 36-A. Section 36-A

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validates transfers or partitions creating fragmentation which had been made before commencement of the Amendment Act, subject to the stated exception concerning completed eviction under the erstwhile Section 35(2). The petitioner's sale deed is dated 19.04.2024, after the amendment. The omission of Chapter V may remove the former statutory impediment relating to fragmentation, but neither the omission nor Section 36-A determines whether the petitioner's vendors possessed the title which they purported to convey. That question remains untouched by the amendment.

26. The further contention that the restraint substantially grants the final relief claimed in the suit also does not furnish a ground for interference. It is true that courts ordinarily avoid granting at an interlocutory stage what would effectively amount to final relief. But the rule is not absolute. ***Deoraj v. State of Maharashtra***[11], recognises that the court must also consider the converse situation, namely, whether withholding protection would leave nothing meaningful to be adjudicated when the main proceeding is ultimately decided. The controlling considerations remain the strength of the prima facie case, balance of convenience and irreparable injury. In the present case, the impugned restraint does not declare title in favour of the plaintiffs or dispossess petitioner No.1. It only prevents further construction which would change the existing physical state of the disputed property until the suit is decided.

[11] (2004) 4 SCC 697

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27. On an overall consideration, this Court is unable to hold that the learned Additional District Judge exceeded the permissible limits of appellate jurisdiction. The learned trial court had found a prima facie case in favour of the plaintiffs and had recognised that Plot No.896 was disputed. Its principal reason for nevertheless permitting construction up to roof level was the hardship arising from leaving an existing structure unfinished. The appellate court was entitled to examine whether that consideration constituted sufficient irreparable injury to justify alteration of disputed property.

28. It is important to clarify that this conclusion is not founded upon any final acceptance of the plaintiffs' chain of title. The sale deed dated 20.02.1953, the consolidation entries of 1989, the effect of the dismissal of Consolidation Revision Case No.1421 of 1990, the subsequent mutations, the sale deed dated 19.04.2024, the pending Consolidation Revision Case No.79 of 2024, the objection under Section 51 and the maintainability of the suit as framed are all matters which must be determined by the competent forum in accordance with law. The finding of a prima facie case made while considering temporary injunction cannot be treated as proof of title.

29. Once the judgment of the learned appellate court is found to represent a legally permissible exercise of appellate jurisdiction, this Court cannot, under Article 227, restore the trial court's arrangement merely because completion of the roof may appear to be another possible equitable course. Such an exercise would convert supervisory jurisdiction into a second appeal on discretion.

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VI. CONCLUSION:

30. Accordingly, this Court finds no ground for interference with the judgment dated 22.08.2025 passed by the learned Additional District Judge, Nimapara in FAO No.26 of 2025. The CMP is, therefore, **dismissed**.

31. Interim order, if any, passed earlier stands vacated.

(Dr. Sanjeeb K Panigrahi)
Judge

Orissa High Court, Cuttack,
Dated the 30th October, 2026/

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