

(2025) 10 OHC CK 1324
In the Orissa High Court
Case No : C.M.P. No.236 Of 2024

Abakash Behera @ Bihara

APPELLANT

Vs

Sudam Charan Jena & Others

RESPONDENT

Date of Decision : 23-10-2025

Acts Referred:

Constitution Of India, 1950 — Article 227

Citation : (2025) 10 OHC CK 1324

Hon'ble Judges : Sashikanta Mishra, J

Bench : Single Bench

Advocate : Sandeep Rath, H.S. Satapathy

Final Decision : Allowed

Judgement

Sashikanta Mishra, J

1. The petitioner is the defendant No.3 in Civil Suit No.342 of 2022 pending in the Court of learned Civil Judge (Sr. Division), Jajpur Road, filed by the present Opposite Parties as Plaintiffs.

2. In the present application filed under Article 227 of the Constitution of India, the defendant-petitioner seeks to challenge the order dated 07.12.2023 passed by the learned Additional District Judge, Jajpur Road in FAO No.15 of 2023 reversing the order dated 25.04.2023 passed by the trial Court in Interim Application No.181 of 2022 arising out of the aforementioned suit.

3. The plaintiffs have filed the suit in representative capacity as villagers of Jakhapur claiming the following relief:-

"11.That the plaintiffs therefore, prayed:-i.Let it be declared that the villagers of village Jakhapura including plaintiffs have communal right over the suit land.

ii.Let the defendant No.3 be permanently restrained from entering upon the suit land. iii.Let the cost of the suit allowed in favour of the plaintiffs.

iv. Let any other relief and reliefs in favour of plaintiffs which deemed fit and proper as per law.

And for this act of your honour and kindness the plaintiff's as in duty bound shall ever pray."

4. They also filed the aforementioned interim application seeking an order of injunction against the defendant No.3. It was claimed that they have a strong prima facie case, balance of convenience lies in their favour and that they shall suffer irreparable loss which cannot be compensated in terms of money if an order restraining the defendant No.3 from alienating the suit land or making any new construction or creating any third party interest is not passed. The defendant No.3 filed his objection stating that he has valid title and possession over the suit land having purchased the same from its rightful owner. Further, the suit land also stands recorded in his name.

5. After hearing learned counsel for both parties, the trial Court, by order dated 25.04.2023 found that the question whether the suit land is communal land and whether the same vested to Government after vesting etc., is to be decided in the original suit. However, the plaintiffs have a fair question to raise. It was thus held that the plaintiffs have a prima facie in their favour. As regards irreparable loss, the trial Court, considering the relevant documents of title along with rent receipts found the defendant No.3 to be prima facie in possession over the suit property. It was also found that the plaintiffs could not adduce any evidence to support their plea of the land being used for communal purposes. It was also held by the trial Court that in case the suit land is alienated during pendency of the suit, the doctrine of lis pendence would become applicable. Thus, finding that the defendant No.3 is in possession of the suit land, the trial Court held that the balance of convenience lies in his favour. As such, the interim application was dismissed. The plaintiffs carried appeal to the District Court which was disposed of by learned Addl. District Judge.

6. Learned Additional District Judge found that there was no document to support the fact that the suit land is used for communal purposes. There were also documents to show that the defendant No.3 had purchased the land from its recorded owner and was in possession. Having held thus, the first appellate Court was of the view that the title of the property and possession is not clear, which is to be decided in the suit. It was further held that if injunction is not granted the whole village will be deprived of their communal rights. Basically on such findings, the appeal was allowed by reversing the order of the trial Court. The parties were directed to maintain status quo over the property with the plaintiffs being allowed to use the property. The parties were further directed not to make any construction over the suit property and not to change the nature and character of the suit land in any manner during pendency of the suit. Said order is impugned in the present application.

7. Heard Mr. S. Rath, learned counsel appearing for the defendant-petitioner and

Mr. H.S. Satapathy, learned counsel appearing for the plaintiffs-Opposite Parties.

8. Mr. Rath would submit that in order to pass an order of injunction, the Court has to be satisfied with regard to the existence of all three ingredients i.e., prima facie case, balance of convenience and irreparable loss. In the instant case, the trial Court found that all the three ingredients were not established for which it refused the prayer for injunction. Moreover, there is a clear finding that the petitioner-defendant No.3 is in possession over the suit property and prima facie has title having purchased the suit property from its rightful owner. The first appellate Court without any finding as regards use of the suit land for communal purposes reversed the finding of the trial Court.

9. Mr. Satapathy, learned counsel appearing for the plaintiffs-Opposite Parties would submit that the antecedent title of defendant No.3 prior to vesting is doubtful since there is nothing on record to prima facie show as to how the land came to be recorded in the name of the vendor of the defendant No.3 after vesting. Moreover, the claim of the plaintiffs that the suit land is being used for communal purposes by the villagers was never rebutted by defendant No.3. The first appellate Court therefore, rightly reversed the order of the trial Court.

10. It goes without saying that all the three ingredients namely, prima facie case, balance of convenience and irreparable loss are required to be satisfied for grant of an order of injunction. It is equally well settled that even if one of the ingredients is absent, no order of injunction can be passed. The trial Court found that the plaintiffs have raised an arguable case for which, it held that plaintiffs have a prima facie case.

However, on the question of irreparable loss and balance of convenience, the trial Court specifically held that the plaintiffs could not adduce any evidence to show that the land was being used by the villagers for communal purposes. On the other hand, defendant No.3 had documents to show his title as well as possession. The trial Court therefore, refused the prayer for injunction. This Court finds nothing wrong in the approach as well as the reasoning behind the order passed by the trial Court.

11. In contrast to the findings of the trial Court, the first appellate Court accepted the finding that there is no evidence to show that the land is being used for communal purposes by the villagers yet strangely, held that unless injunction is granted, the villagers of the whole village will be deprived of their communal rights in enjoying the suit property.

12. This, in the considered view of this Court is a finding not supported by any evidence whatsoever. The approach of the first appellate Court does not appear to be proper at all more so as it has delved into the question of title and possession in detail that are not required to be gone into at the time of dealing with an application for injunction. The impugned order is therefore, rendered unsustainable in the eye of law and deserves interference.

13. In the result, the CMP is allowed. The impugned order is set aside. The order passed by the trial Court in the matter of injunction is restored. The suit being of the year 2022, the trial Court shall make all endeavor to dispose of the same expeditiously, preferably within one year.

14. It shall be open to the plaintiffs to move the Court below for appropriate orders in case they feel aggrieved by any change in the nature and character of the suit land being effected by defendant No.3 to their detriment.