
(2007) 01 OHC CK 0017
In the Orissa High Court

Golekha Behari Senapati

APPELLANT

Vs

Debdas Mansingh and Others

RESPONDENT

Date of Decision : 16-01-2007

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 151

Citation : (2007) 103 CLT 243 : (2007) 1 OLR 455 Supp

Hon'ble Judges : A.S. Naidu, J

Bench : Single Bench

Judgement

A.S. Naidu, J.—The order dated 10-10-2006 passed by the Learned Ad hoc Addl. District Judge, FTC-IV, Bhubaneswar in Interim Application No. 19 of 2006 arising out of Title Suit No. 69 of 1999 is assailed in this Writ Petition by the Plaintiff in that suit under Order 43, Rule 1(r) of the Code of Civil Procedure.

2. Admittedly the Petitioner has filed the aforesaid Title Suit with the following prayer:

(a) Let the Hon''ble Court be pleased to draw a preliminary decree in respect of fifty per cent interest of the Plaintiff over the Schedule-A and B landed property and the parties be directed to effect partition among themselves within a stipulated period fixed by the Hon''ble Court failing which survey knowing commissioner be appointed to effect partition among the parties in respect of Schedule A and B landed property and the share of the Plaintiff given to him through process of law;

(b) Cost of the suit be decreed;

(c) The Defendants be permanently enjoined to make any construction over the Schedule A and B landed property prior to partition and/or to change the nature and character of the suit property by any manner;

(d) Any other relief or reliefs which the Hon''ble Court under the circumstances, deems fit and proper be given.

Along with the plaint, the Plaintiff filed a petition before the Court below under Order 39, Rules 1 and 2 CPC read with Section 151 CPC which was registered as Misc. Case No. 61 of 1999 in which the said Court directed Defendants 1 to 3 to maintain status quo of the suit properties. While matter stood thus, on the basis of a petition filed by the Plaintiff under Order 1, Rule 10 CPC, Defendant Nos. 4 to 7 were impleaded as parties to the suit. It is alleged that on 6-1-2006 a portion of the suit lands was sold to one Smt. Sujata Patnaik. After her purchase, said Smt. Sujata Patnaik obtained due permission for conversion of the said land u/s 8 A of the OLR Act, got the record-of rights corrected and started raising construction thereon. Coming to know the said fact, on the basis of a petition filed by the Plaintiff, said Smt. Sujata Patnaik and her vendors were impleaded as Defendant Nos. 11, 12 and 13 respectively. A petition was thereafter filed by the Plaintiff under Order 39, Rules 1 and 2 CPC read with Section 151 CPC, which was registered as aforesaid Interim Application No. 19 of 2006, praying to restrain said Defendants 11 to 13 from transferring the suit lands, raising any construction thereon or from interfering with the possession of the Plaintiff over the said lands. The said prayer of the Plaintiff was strongly resisted by the aforesaid three Defendants. However, after considering the facts and circumstances of the case, the Court below by order dated 10-10-2006 declined the prayer of the Plaintiff and dismissed the Interim Application. Being aggrieved by that order the Plaintiff has approached this Court.

3. According to Mr. R.K. Mohanty, Learned Counsel for the Plaintiff-Appellant, in spite of restraint order passed by the Court below, some of the Defendants alienated portions of the suit lands, and the said alienations are hit by the principles of *lis pendens*. But then It is submitted that if the persons who have purchased portions of the lands in violation of the status quo order passed by the Court below are not restrained from raising structure on the said land or changing the nature and character of the suit land, great prejudice would be caused to the Plaintiff as he would be deprived of enjoying the fruits of the decree that may be passed in the suit.

4. The aforesaid submissions of Mr. Mohanty are strongly repudiated by Mr. S.P. Misra, Learned Senior Advocate appearing for the Defendant-Opposite parties. According to him the sale deeds executed *lis pendens* are not *ab initio* void and some right accrues to the purchasers, although the same will be subject to result of the suit and shares of the parties carved out in the suit. Mr. Misra further submitted that plot No. 350 which is the subject matter of the suit has a vast area and Defendant No. 11 has purchased only a small portion thereof. She is also the owner of adjoining land being plot No. 351 and is running a Petrol Pump thereon after entering into necessary agreement with the concerned Oil Company and others. She only intends to fill up the land purchased by her appertaining to plot No. 350 and raise some minor structures thereon with the sole purpose of providing egress and ingress of customers to the Petrol Pump. According to Mr. Misra, in the event the Plaintiff succeeds in the suit, the lands appertaining to plot No. 350 being vast, no prejudice would be caused to him as

there will be no difficulty to allot his share from out of the said plot. In the aforesaid circumstances Mr. Misra submitted that it is a fit case where no restraint order against the Petitioner may be passed and the impugned order of the Court below may not be interfered with by this Court.

5. Mr. Mohanty on the other hand submitted that the Title Suit being one for partition, until a decree is passed allotting different portions of the suit lands to different co-sharers, each co-sharer has right over every inch of the disputed lands. He further submitted that for the aforesaid reason it cannot be said that by the aforesaid alienation of lands in favour of Defendant No. 11 Appellant will cause no prejudice to the Plaintiff. It is further submitted that taking advantage of her possession of a portion of the suit lands, Defendant No. 11 by way of equity may claim allotment of the very portion of the disputed land in her favour during final decree proceeding which would deprive the Plaintiff of a valuable piece of land.

6. I have heard Learned Counsel for the parties at length and perused the materials available on record. As would be evident from records, Defendant No. 11 has already obtained permission u/s 8-A of the OLR Act for conversion of the land purchased by her out of suit plot No. 350 and has filled up the said land for the purpose of providing egress and ingress for the customers to the Petrol Pump. That apart, the portion of land out of plot No. 350 alienated in favour of Defendant No. 11 being a strip which is being used by the Petitioner as aforesaid, substantial justice cannot be done if no restraint order is passed as prayed for against Defendant No. 11.

7. Appreciating the facts and circumstances of the case as submitted by the Learned Counsel for both sides, this Court finds that the impugned order does not suffer from any infirmity or illegality, and accordingly declines to interfere with the same. But then this Court makes it clear that portion of the disputed lands alienated in favour of Defendant No. 11 and the structures, if any, raised thereon will be subject to result of the suit. This Court makes it clear that Defendant No. 11 shall not claim any equity for raising any structure on the said land and shall remove the said structure or leave the same if the particular land is allotted in favour of the Plaintiff without any demur. Further, the Petitioner-Defendants or other Defendants shall not claim any preferential allotment in the final decree proceeding. This Court restrains all the parties to the suit from alienating the suit land.

With these directions/observations the FAO is disposed, and so also all the Misc. Cases filed in this FAO.