

(1984) 01 OHC CK 0016
In the Orissa High Court
Case No : Misc. Appeal No. 109 of 1983

Haribandhu Das and Another	Vs	APPELLANT
Ashoka Industries (P.) Ltd. and Others		RESPONDENT

Date of Decision : 13-01-1984

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1, Order 39 Rule 2

Citation : AIR 1984 Ori 104

Hon'ble Judges : B.N. Misra, J

Bench : Single Bench

Advocate : Bijan Ray and S.B. Choudhury, for the Appellant; R.K. Rath, B.K. Nayak, J. Sas, K. Jena and N.C. Panigrahi, for the Respondent

Final Decision : Dismissed

Judgement

B.N. Misra, J.—This appeal is directed against the order dated 11-10-1982 passed by the learned Subordinate Judge, Bhu-baneswar in Misc. Case No. 504 of 1982 dismissing the appellant's petition for interim injunction sought against the present respondents 1 to 6. As this appeal was filed beyond the period of limitation, the appellants had filed an application for condonation of delay which was allowed by Order No. 4 dated 23-3-1983. The appellants had also filed a petition for, ad interim injunction which was disallowed by the same order dated 23-3-1983.

2. Appellants 1 and 2 are plaintiffs 1 and 2 respectively in O. S. No. 223/82-I filed in the Court of the learned Subordinate Judge, Bhubaneswar. Appellant No. 2 is Indian National Congress at New Delhi and Appellant No. 1 claims to be the permanent working Secretary of the Congress appointed as such on 5th April, 1979 by the then President of the State Unit of the Congress. The suit has been filed against seventeen defendants of whom in this appeal defendants 1 to 6 are respondents 1 to 6 respectively, The suit land as described in the schedule appended to the plaint comprises of an area of A. O. 80 decimals of land appertaining to plot No. 86, drawing No. C 3656 at Goutam Nagar, Bhubaneswar.

The main prayers of the appellants in the suit are for a declaration that plaintiff No. 2 (the Indian National Congress) has permanent leasehold rights over, the suit land, recovery of possession of the suit land from defendants 1, 5 and 6, permanent injunction restraining defendants 1, 5 and 6 and their agents from making any further construction on the suit land or from using the building on the suit land as a hotel or for any other commercial purpose and for mandatory injunction with a direction to respondents 1, 5 and 6 to demolish the construction over the suit land or in the alternative to use the building on line suit land as "Congress Bhawan". The appellants' case may be briefly noted. In May, 1960 while respondent No. 2 was the Chief Minister of Orissa, the State of Orissa, respondent No. 3, granted a perpetual lease in respect of the suit land in favour of the Orissa Unit of the Congress, appellant No. 2. Upon deposit of the premium and the requisite consideration, the suit land was demarcated and possession was duly delivered by respondent No. 3 to appellant No. 2. Appellant No. 2 decided that a "Congress Bhawan" would be constructed on the suit land to conduct and promote Gandhian activities to perpetuate the memory of the freedom fighters of this country. The then President of the All India Congress Committee laid the foundation stone of the "Congress Bhawan" on the suit land on 16-5-1960. A registered deed of lease was executed by respondent No. 3 in favour of Swarajya Ashram Parichalana Samittee for the purpose of construction of the "Congress Bhawan" and appellant No. 2 continued to possess the suit land through its agents and Committees. For various reasons, the "Congress Bhawan" could not be constructed on the suit land. It is alleged that without any notice to the appellants and without compliance with the requirements of law, respondent No. 3 illegally determined the lease granted in favour of defendant No. 10 (Swarajya Ashram Parichalana Samittee) and resumed the suit land. According to the appellants, the resumption of the suit land and determination of the lease in respect thereof are illegal, invalid, null and void and that the appellants under law continue to be the lessees of the suit land. On 10-4-1971 respondent No. 3 executed a lease in respect of the suit land in favour of respondent No. 4, Prajatantra Prachar, Samittee, whose Chairman is respondent No. 2, for a consideration of Rs. 80,000/-. It is asserted that no rights have accrued in favour of respondent No. 4 by virtue of the lease dated 10-4-1971 and that the appellants continue to remain in possession of the suit land. On 18-6-1979 by two separate deeds of sale, respondent No. 2, who is the Chairman of Prajatantra Prachar Samittee (respondent No. 4), sold portions of the suit land to respondents 5 and 6. The remaining portion of the suit land was sold by respondent No. 2 to respondent No. 1 by a deed of sale dated 16-5-1980. It is alleged that neither respondent No. 2 nor respondent No. 4 had any right, title or interest in the suit land and therefore no right, title or interest was conveyed to respondents 1, 5 and 6 under the aforesaid deeds of sale. It is also alleged that the sale deeds are otherwise illegal and inoperative. According to the appellants, respondent No. 1 without proper authorisation, and permission as required under law started constructing a multi-storied hotel on the suit land and by the time the appellants filed the plaint in the Court below the building had been

constructed up to the sixth floor. In these circumstances the appellants have prayed that interim injunction should be issued against the respondents restraining them from making any further construction over the suit land and from using the building over the suit land for the purpose of a hotel or for any other commercial purpose. It is noted in the impugned order that at the time of argument in the lower Court the prayer of the appellants with regard to injunction was confined by them to restraining the respondents and particularly respondent No. 1 from utilising the seven-storied building already constructed over the suit land for the purpose of running a hotel.

3. The State of Orissa, respondent No. 3, has in its counter denied the allegations made by the appellants. The maintainability of the suit and the locus standi of the appellants have been challenged. It is stated that no grant or lease of the suit plot was made by respondent No. 3 in favour of plaintiff No. 2 in May, 1960 or at any time. The suit land for the first time was leased out in favour of Swarajya Ashram Parichalana Samittee (respondent No. 10) on 31-12-65 and the deed of lease was registered on 3-2-66. It is further asserted that the lease dated 10-4-71 granted by respondent No. 3 in favour of respondent No. 4 is valid, legal and binding.

4. In their objection, respondents 2 and 4 have denied the allegations made against them by the appellants. The locus standi of appellant No. 2 to file the suit is challenged. It is denied that the suit land was even leased out to the Congress Party as alleged by the appellants. The lease granted by respondent No. 3 in favour of respondent No. 4 was valid and the further transfers by respondent No. 4 with the permission of the authorities in favour of respondents 1, 5 and 6 were also valid. It is also stated that the building on the suit land has been constructed in compliance with the requirements of law. It is stated that the Swarajya Ashram Parichalana Samittee (respondent No. 10) became defunct and respondent No. 3 thereafter cancelled the lease in favour of respondent No. 10 in 1969. The suit land was next leased out in favour of respondent no. 4 and remained in undisturbed possession of the said respondent till 1979 whereafter with the sanction of the authorities respondent No. 4 transferred this land to respondents 1, 5 and 6.

5. Respondents 5 and 6 have separately filed their objections denying the allegations of the appellants. They have asserted that the sales in their favour by respondent No. 4 are valid and after taking possession of the portions of the suit land purchased by them they have put up constructions with the sanction and permission of the authorities.

6. In its objection, respondent No. 1 has denied the plaint allegations. According to respondent No. 1, it has validly acquired a portion of the suit land by virtue of a sale-cum-lease deed executed on 16-5-1980 and registered on 22-5-1980 from respondent No. 4 through its Chairman, respondent No. 2, for a consideration of Rs. 31,000/-. The said deed was also executed by a Deputy Secretary to Government on behalf of the Governor of Orissa. Respondent No. 1 became a

lessee under the State Government and took possession of the suit land on 16-5-1980, the date of execution of the deed. It is denied that there was any structure on the suit land when respondent No. 1 took possession. It is asserted that no entity under the name of "Indian National Congress" (appellant No. 2) is in existence and that appellant No. 1 has no locus standi to file the present suit. According to respondent no. 1, it had purchased a portion of the suit land on 16-5-1980 from respondent No. 4, the Prajatantra Pradhar Samittee, which is a society registered under the Societies Registration Act and the deed was executed by its Chairman, respondent no. 2. It is denied that respondent No. 2 had sold the land to respondent No. 1. It is stated that after the determination of the lease in favour of Swarajya Ashram Parichalana Samittee (defendant No. 10) and resumption of the suit land by the State (respondent No. 3) in 1969, a valid lease, was granted in favour of respondent No. 4 and thereafter respondent No. 4 sold portions of the suit land by separate sale deeds to respondents 1, 5 and 6. It is further stated that the seven-storied hotel has been constructed by respondent No. 1 in compliance with law and with the permission of the concerned authorities and therefore there is no ground why an order of injunction should be issued against it. The valuation of the suit is also challenged.

7. Upon consideration of the respective cases of the parties and after bearing counsel, the learned Subordinate Judge came to hold that the appellants did not have a prima facie case, that the balance of convenience was not in their favour and that they were not likely to suffer irreparable loss and injury if injunction would not issue. Accordingly, the petition for interim injunction filed by the appellants was dismissed with a direction that respondent No. 1 while entering into contracts or agreements with different parties connected with establishment of Konark Hotel in the suit building was to provide a specific clause in all such contracts and agreements that the contracts or agreements so entered into would be subject to the final decision of the Court as to the title and ownership of the suit building.

8. It is the settled position of law that an interlocutory order of injunction under Order XXXIX, Rules 1 and 2, Civil P. C. can be granted by the Court only if the plaintiff proves that he has a prima facie case, that he is likely to suffer irreparable loss and injury if the injunction is to be refused and that the balance of convenience is in his favour. In Orissa State Commercial Transport Corporation Ltd. Vs. Sri Satyanarayan Singh and Another, it was held :

"10. In establishing a prima facie case, plaintiff need not establish his title. It would be sufficient for him to show that he has a fair question to raise as to the existence of this right and that till the question is ripe for trial a case is made out for preservation of the property in status quo

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11. "Irreparable injury" means such injury which cannot be adequately remedied by damages. The remedy by damages would be inadequate if the compensation

ultimately payable to the plaintiff in case of success in the suit would not place him in the position in which he was before injunction was refused

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12. "Balance of convenience" means the comparative mischief or inconvenience to the parties. The inconvenience to the plaintiff if temporary injunction is refused would be balanced and compared with that to the defendant if it is granted. If the scale of inconvenience leans to the side of the plaintiff then alone interlocutory injunction should be granted

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Keeping in view the principles noted above, the facts, of this case may now be examined. The first question to be decided is whether, the appellants have established a prima facie case. Admittedly the suit land belonged to the State, respondent No. 3. As per the averments contained in para 4 of the plaint, the State (respondent No. 3) granted a perpetual lease in respect of the suit land in favour of the Orissa Unit of the Congress (appellant No. 2) in May, 1960 for the purpose of construction of "Congress Bhawan". However, no evidence or material has been produced by the appellants to indicate that any lease was granted by the State in favour of appellant No. 2 in May, 1960. On the other hand, the State (respondent No. 3) has categorically denied that any lease was granted by it to the appellants in May, 1960 or at any time. The State has asserted that the suit land was leased out in favour of Swarajya Ashram Parichalana Samittee (defendant No. 10) on 31-12-1965 and the deed of lease was registered on 3-2-1966. A copy of this lease deed is on record. In this Court, a copy of letter No. 728 (2) dated 8-3-1983 issued by the Inspector General of Registration has been filed and it is stated in this letter that the Swarajya Ashram Parichalana Samittee, Bhubaneswar has been registered under the Societies Registration Act, 1860 on 21-5-1959 bearing registration number 246/11 of 1959. The contents of this letter are not disputed. Therefore, it is clear that first lease was granted by the State in favour of the Swarajya Ashram Parichalana Samittee (defendant No. 10) which is a society registered under the Societies Registration Act. There is nothing in the lease deed to indicate that the said lease was granted to Swarajya Ashram Parichalana Samittee on behalf of appellant No. 2 or as its agent. There is also nothing in the deed to indicate that "Congress Bhawan" was to be constructed on the land which was leased out. It has been rightly pointed out by the learned counsel appearing for respondent No. 1 that as the Swarajya Ashram Parichalana Samittee is a distinct legal entity having its own legal personality, its rights and interests in respect of the suit land cannot under law be equated with those of appellant No. 2. Learned counsel appearing for the appellants has urged that Swarajya Ashram Parichalana Samittee (defendant No. 10) was only an agent and Benamidar of appellant No. 2. It is well settled that a party who sets a plea that a particular transaction is a Benami transaction, must plead and prove that what is apparent is not real. It may be noted that in the plaint there is no specific averment that the lease granted in favour of defendant

No. 10 was a Benami transaction on behalf of appellant No. 2. It is vaguely stated in para II of the plaint:

"..... The plaintiffs understand that a deed of lease was registered during the said period in favour of the Committee (defendant No. 10) of the plaintiff no. 2 and the plaintiff No. 2 continues to possess the suit property through its agents and Committees."

Learned counsel for the appellants has pointed out that in his letters dated 19-4-1982 and 3-5-1982, which are on record, respondent No. 2 has admitted that the Swarajya Ashram Parichalana Samittee, was to build the "Congress Bhawan". The contents of the two letters which clearly are not contemporaneous documents do not prima facie indicate that the lease granted by the State in favour of the Swarajya Ashram Parichalana Samittee (defendant No. 10) was a Benami transaction. In the absence of further materials and evidence, it is not possible to come to a prima facie finding that the lease, deed granted by the State in favour of defendant no. 10 was Benami in nature. The learned Subordinate Judge is correct in his conclusion that at present it is difficult to say that defendant No. 10 was a Sub-Committee of plaintiff No. 2 or a Benamidar in respect of the suit land.

9. It is further urged on behalf of the appellants that determination of the lease granted in favour of defendant No. 10 by the State is illegal and invalid in the absence of service of requisite notices. Whether notices were issued by the State is a question of fact which can be determined only after evidence is led in the main suit. For the present, the letter dated 13-2-1969 issued by the Government to respondent No. 2 as Chairman, Swarajya Ashram Parichalana Samittee (respondent No. 4) which is on record shows that the lease granted in favour of defendant No. 10 was determined with effect from 25-2-1969. Admittedly, the suit land was subsequently leased out in 1971 in favour of respondent No. 4. The allegation of the appellants that this subsequent lease was collusive in nature is yet to be proved. At present, there are no materials on record to show that the lease in favour of respondent No. 4 was a collusive or fraudulent transaction.

10. On the issue of possession, it is seen that there is no documentary evidence supporting the plea of the appellants that they have remained in possession of the suit land from 1960 till 1980. No rent receipts or other documents have been filed to prima facie indicate the possession of the appellants. In these circumstances, I agree with the learned subordinate Judge that the appellants have failed to establish that they have a prima facie case.

11. For the sake of convenience, the questions of balance of convenience and irreparable loss and injury may be considered together. It is a fact that the hotel building constructed on the suit land by respondent No. 1 was almost complete when the appellants filed the present suit. It is noted in the impugned order that the appellants confined their prayer for interim injunction only to restrain respondent No. 1 from utilising the building from the purpose of running a hotel.

An affidavit has been filed that the hotel was opened on 23-3-1983 and has since been running as a going concern. No counter to the said affidavit has been filed by the appellants nor are the facts stated in the affidavit disputed. In these circumstances, the limited prayer of the appellants to restrain respondent No. 1 from using the building on the suit land as a hotel appears to have become infructuous. On consideration, I agree with the learned Subordinate Judge that the appellants have failed to establish that they are likely to suffer irreparable loss and injury if injunction is refused or that the balance of convenience is in their favour.

12. The issues as to valuation and court-fee and locus standi of the appellants are to be considered by the Court below in the main suit and it is not necessary to consider the said issues while dealing with the matter of interim injunction.

13. In the result, this appeal which has no merit is dismissed. The order of the learned Subordinate Judge dated 11-10-1982 is confirmed. There shall be no order as to costs.