
(2012) 11 OHC CK 0011
In the Orissa High Court
Case No : Writ Petition (C) No. 16378 of 2012

Jiban Das

APPELLANT

Vs

Dharanidhar Rout

RESPONDENT

Date of Decision : 23-11-2012

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 47
Specific Relief Act, 1963 — Section 19(b)

Citation : (2013) 1 OLR 196

Hon'ble Judges : M.M. Das, J

Bench : Single Bench

Advocate : Ramakant Mohanty, D.K. Mohanty, D.V. Vardaraj, Sangita Mohanty, S.K. Mohanty, Sumitra Mohanty and A.K. Das, for the Appellant; Subrat Mishra and Sasmita Mohapatra, for the Respondent

Final Decision : Dismissed

Judgement

M.M. Das, J.—Heard learned counsel for the parties. This writ petition has been filed against the order dated 21.8.2012 passed in I.A. No. 392 of 2012 arising out of Execution Case No. 2 of 2012 by the learned Civil Judge (Senior Division), Bhubaneswar. In the said execution case, a decree for specific performance of contract granted in favour of the petitioner in C.S. No. 790 of 2007 has been put to execution. By the said decree, the defendant-judgment debtor was directed to execute the sale deed in respect of the property in question in favour of the plaintiff. As the said document has not been executed by the defendant-opposite party, the decree has been put to execution. After receipt of the notice in the execution proceeding, the petitioner, who was the defendant in the suit and the judgment debtor in the execution proceeding, filed an application u/s 47 C.P.C. stating that during pendency of the suit, he has sold the property and therefore, the decree cannot be executed against him. The trial Court taking note of the said objection raised by the petitioner-judgment debtor in his application u/s 47 C.P.C. and the objection filed thereto as well as referring to the case laws Cited on behalf of the petitioner came to the conclusion that the sale even if made is a

lis pendence sale and the same cannot affect the right of the decree holder and accordingly, dismissed the said application.

2. Various contentions have been raised before me with regard to the aforesaid findings, one of such contention is that the bona fide purchaser, who had no knowledge during pendency of the suit, cannot be held to be a lis pendence purchaser u/s 19 (b) of the Specific Relief Act. However, I find that this question can only be raised by the purchaser and not the judgment debtor. Section 47 CPC provides the questions which are to be determined by the executing Court.

3. A bare reading of the said section would go to show that the objection raised by the petitioner was not entertainable under the provisions of the said section. It appears that the judgment debtor by filing the said application was espousing the cause of the person to whom he has alienated the property during pendency of the suit. The decree being one for specific performance of contract with a direction that the judgment debtor is to execute a sale deed in favour of the decree holder, the questions raised in the application u/s 47 C.P.C. were not available to be raised by the judgment debtor in the execution proceeding. I, therefore, find no error in the impugned order passed by the executing Court in rejecting the said application u/s 47 C.P.C. filed by the petitioner.

4. This writ petition being devoid of merit stands dismissed. The interim order passed earlier stands vacated. All pending misc. cases stand disposed of. Urgent certified copy of this order be granted on proper application.