

(2024) 04 OHC CK 0031
In the Orissa High Court
Case No : CMP No.1498 Of 2023

Kunjalata Jena And Others

APPELLANT

Vs

Purna Chandra Jena And Others

RESPONDENT

Date of Decision : 03-04-2024

Acts Referred:

Code of Civil Procedure, 1908 — Order 39 Rule 1, Order 39 Rule 2

Citation : (2024) 04 OHC CK 0031

Hon'ble Judges : K.R. Mohapatra, J

Bench : Single Bench

Advocate : Hrudananda Mohapatra, Sradha Das

Final Decision : Dismissed

Judgement

K.R. Mohapatra, J

1. This matter is taken up through hybrid mode.
2. Judgment dated 20th October, 2023 (Annexure-6) passed in F.A.O. No.41 of 2021 is under challenge in this CMP, whereby learned 1st Additional District Judge, Puri dismissing the appeal confirmed the order dated 18th September, 2021 (Annexure-2) passed by learned Additional Civil Judge (Senior Division), Puri in I.A. No.6 of 2021 (arising out of C.S. No.56/170 of 2014) filed by the Plaintiffs-Petitioners under Order XXXIX Rules 1 and 2 CPC.
3. Mr. Mohapatra, learned counsel for the Plaintiffs-Petitioners submits that C.S. No.56/170 of 2014 was filed by Bharat Jena and Lingaraj Jena. Bharat Jena died during pendency of the suit and his legal heirs have been substituted. In the year, 2021, the suit Schedule 'B' land was acquired by the State Government. Taking advantage of the wrong recording of the land in favour of Jatadhari Jena, the predecessor of Defendant Nos.2 to 4, they claimed compensation before the land acquisition authority. Hence, the Petitioners filed I.A. No.6 of 2021 with a prayer to restrain the Opposite Parties from transferring the suit properties to any 3rd party and cause any waste and damage to the same by changing the

nature and character of the suit property till disposal of the suit. The said application was dismissed vide order dated 18th September, 2021 under Annexure-2. Assailing the same, the Petitioners preferred F.A.O. No.41 of 2021, which has also dismissed vide judgment under Annexure-6. Assailing the said order, this CMP has been filed.

4. It is submitted by Mr. Mohapatra, learned counsel for the Petitioners that the plaint averment clearly discloses that the suit schedule properties are ancestral property of the parties to the suit. Schedule 'B' have been recorded in the name of Jatadhari Jena, the predecessor of Defendant Nos.2 to 4. Taking advantage of the same, they are trying to alienate the property and receive compensation from the Land Acquisition Authority. As such, the Schedule 'B' property should be protected during pendency of the suit. Learned trial Court rejected the application under Order XXXIX Rules 1 and 2 CPC holding that the Hal as well as Sabik ROR stands in the name of Jatadhari Jena, the predecessor of Defendant Nos.2 to 4. They also clearly pleaded and supported the plea with documents to prove the source of their title. Hal ROR was published in the year, 1992. But, the same was not challenged. The suit for partition was instituted in the year, 2014. Thus, finding that ingredients of Order XXXIX Rules 1 and 2 CPC is not satisfied, learned trial Court rejected the petition under Order XXXIX Rules 1 and 2 CPC. Learned appellate Court reiterating the said observation recorded a finding that since the land has been acquired by the State Government for public purpose, the property in question is no more in the hands of either of the parties to the appeal. As such, no injunction can be granted. It is also observed that the modified prayer made by the Petitioners in the petition under Order XXXIX Rules 1 and 2 CPC for a direction to Defendant Nos.2 to 4 not to receive the compensation is also not sustainable as there are specific provision under the Land Acquisition Act for apportionment of the award among the persons who are entitled to get the compensation.

5. Mr. Mohapatra, learned counsel for the Petitioners further submits that if Defendant Nos.2 to 4 receives the compensation, the Petitioners will not get any relief even if they succeed in the suit. Hence, he prays for setting aside the order under Annexures-2 and 6 and to restrain the Defendant Nos.2 to 4 to receive the compensation.

6. Ms. Das, learned counsel appearing for the contesting Opposite Party Nos.2 to 4 submits that there is overwhelming materials to show that Jatadhari Jena was the absolute owner of the suit property. The Hal ROR was published in the year, 1992. But, the same has not yet been challenged. She further submits that since the land stands recorded in the name of Jatadhari Jena, the Opposite Party Nos.2 to 4 being the successors are entitled to receive the compensation for acquisition of land. She further submits that the Petitioners have a remedy under the provisions of Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (for short 'the Act 2013') to claim for apportionment of the compensation. Thus, learned Courts have committed no

error in rejecting the prayer made by the Petitioners under Order XXXIX Rules 1 and 2 CPC.

7. Taking note of the submissions made by learned counsel for the parties, this Court finds that initially the Petitioners filed application under Order XXXIX Rules 1 and 2 CPC with a prayer to restrain the Opposite Party Nos.1 to 4 from creating any 3rd party interest and to change the nature and character of the suit property. They also prayed for an injunction restraining the Defendants from causing waste and damage to the suit property. Since the land has already been acquired, the prayer was modified and the Petitioners claimed to restrain the Opposite Party Nos.2 to 4 from receiving the land acquisition compensation. There is efficacious and adequate remedy under the Act, 2013 to resist the entitlement of Defendant Nos.2 to 4 in receiving the compensation. There is also provision in the said Act seeking for apportionment of the compensation.

8. From the submission of Mr. Mohapatra, learned counsel for the Petitioners, it appears that the Petitioners have not yet availed the remedy under the Act, 2013. Since there is efficacious and adequate remedy under the Act, 2013 to redress the grievance the Petitioners, an application under Order XXXIX Rules 1 and 2 CPC would not be maintainable. In view of the above, this Court finds that learned Courts have committed no error in rejecting the petition under Order XXXIX Rules 1 and 2 CPC.

9. Accordingly, the CMP being devoid of any merit stands dismissed.

Urgent certified copy of this order be granted on proper application.

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