

(2001) 03 OHC CK 0025

In the Orissa High Court

Case No : Civil Revision No. 311 of 1999

M/s Paradip Port Trust, Paradip

APPELLANT

Vs

Managing Director, IDCO, Bhubaneswar

RESPONDENT

Date of Decision : 12-03-2001

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1, Order 39 Rule 2, Order 7 Rule 3
Specific Relief Act, 1963 — Section 38

Citation : AIR 2001 Ori 146 : (2002) 1 CivCC 138 : (2001) 91 CLT 682 : (2002) 2 RCR(Civil) 28

Hon'ble Judges : P.K. Mohanty, J

Bench : Single Bench

Advocate : M/s A.K. Parija, S.P. Sarangi, B.C. Mohanty and P.P. Mohanty, for the Appellant; M/s A. Mukherji, G. Mukherji, P. Mukherji, S. Pattnaik and M.K. Majumdar, for the Respondent

Judgement

P.K. Mohanty, J.—This revision is directed against the order of the learned Civil Judge (Junior Division.) in rejecting the plaintiff-petitioner's application under Order 39, Rules 1 and 2 of the CPC in T. S. No. 213/96 affirmed by the order of the learned Additional District Judge, Jagatsinghpur while dismissing the petitioner's appeal.

2. The short fact of the petitioner's case is that the entire port area along with its assets including movable and immovable properties were transferred to the control of the Central Government vide Government Notification in Commerce (Ports) Department Notification No. 2032 dated 31-5-1965. The Central Government took over the Paradip Port Project and Paradip Port Trust was formed on 1-11-1976. Consequent upon constitution of the Paradip Port Trust all the properties and lands vested in the Board of Trustees of the Port, under the provision of the Major Port Trust Act. The limits of Paradip Port Trust has been defined in a separate notification which is called Paradip Port Trust Limits and therefore all the Government lands situated within the Port Limits as per the notification dated 16-11-1985 the lands are under the possession of the Paradip

Port Trust since its inception and it is exercising all act of possession over the same.

During the Hal settlement, the suit lands are recorded in the name of the plaintiff as owner thereof and the plaintiff is in exclusive possession thereof.

3. It is further stated that due to some dispute over the land between the Government of Orissa and Paradip Port Trust, a High Level Committee meeting was held on 18-1-1992 under the Chairmanship of the Chief Minister of Orissa and subsequently a meeting was held with the Revenue Divisional Commissioner, Cuttack on 6-9-1992 and it was decided that Ac. 6,382,07 decimals of land will be vested with the Paradip Port Trust within the Port Limit and accordingly a premium of Rs 26,87,298.32 paise was paid to the Tahasildar, Kujanga and as per the decision of the High Level Committee, the joint Secretary to the Government of Orissa in the Revenue Department vide letter No. 36793 dated 18-1-1994 directed the Collector, Jagatsinghpur for joint survey of land within the port limit and accordingly the joint survey was made by the Tahasildar, Kujanga and the Port Trust Authorities from November, 1991 to January, 1995 and the land schedule was prepared showing the land in occupation of Port Trust and land reserved for the Government use and demarcation of port trust limit and the Government land was made a drawing was drawn up and the land schedule prepared jointly were signed by the Tahasildar, Kujanga and the Authorities of the Port Trust on 2-3-1995. The Tahasildar, Kujanga in his letter No. 1148 dated 24-3-1995 submitted a report indicating about the details to the Collector, Jagatsinghpur and thus there is no manner of doubt that the Paradip Port Trust is the owner in possession of the suit schedule land.

It is submitted that the opp. parties having no manner of right, title and interest over the suit properties, with the strength of an invalid and a fraudulent document in their favour are threatening to interfere with the possession over the suit land and for which the suit was filed for permanent injunction and during the pendency of the suit a petition under Order 39, Rules 1 and 2, C. P. C. was filed which erroneously and illegally has been rejected by the learned trial court and affirmed by the appellate court without proper application of mind.

It appears that the Defendant-opp. party contested the petition on the plea that the suit lands are not specific and most of the plots being part plots, no specific boundary is given to identify the suit land as required under Order-7, Rule 3, C. P. C.. The Government being the original owner of land is a necessary party to decide the dispute but it has not been impleaded inasmuch as the defendant-opp. party being the owner in possession over the case land by virtue of a registered lease deed of the year 1983 and land having been mutated in its name, a suit simplicitor for permanent injunction is not maintainable as there exists dispute with regard to title between the parties.

It was the defendant's further stand that the suit lands having an area of Ac. 118.70 decimals is part of Ac. 388.68 decimals of land in village Bhitargarh

which was originally acquired by Commerce (Port) and Transport Department of the State Government for the development work of the Paradeep Port. The Commerce (Port) and Transport Department belonged to State Government which was established much before IDCO came to existence. After shifting of Second Steel Plant to Daitary, the site of Paradip Phosphates Ltd. was shifted from Musadia village to the site near Railway Station. In the High Level Committee, the Paradip Port Trust agreed for transfer of Ac. 426.00 of Port land to P.P.L. provided suitable alternative site within the Port area would be available in exchange. As the said Ac. 388.68 decimals of land is remaining unutilised. State Government agreed to give Ac. 243.00 from Irrigation Department and Ac. 90.00 from Fishory Department in total Ac 426 00. It is stated that the IDCO was established in the year 1981 under Orissa Act-I. It was decided that the aforesaid exchange would be done through IDCO. The IDCO by its letter dated 25-11-1982 to Commerce Department requested for surrender of the said Ac. 388.68 decimals of land to Revenue Department which has to transfer the same to the IDCO and accordingly, the Commerce Department surrendered the same to Revenue Department vide letter No. 4658 dated 24-12-1982. Thereafter, the aforesaid land was given possession to IDCO by the Tahasildar, Kujanga which took over possession of the same on 7-2-1983, It is alleged that the exchange was made through the IDCO with the Paradip Port Trust as per the decision made for establishing the P.P.L. near Railway Station. The rest Ac.145.68 decs, of land remained in possession of the IDCO and as such on the application of IDCO the State Government agreed for developing Industries near the port area. Accordingly, sanction was made in respect of Ac.144.68 decs, by Revenue Department letter No. 78926 dated 10-12-1986. But because of the allegation of Paradip Port Trust for fulfilment of their deficit area due to encroachment by outsiders, the original sanction was again reviewed and final sanction was made in respect of Ac. 118 70 decs. . On the basis of said sanction order, registered lease deed was made on 22nd Septembet, 1988 by the Collector, Cuttack in respect of entire Ac. 118.70 decs, of land of village-Bhitargarh for a premium of Rs. 2.97.750/- with detailed land plan. The IDCO became the absolute owner in possession of the said land. It is alleged that subsequently, the case land has been recorded in the name of Paradip Port Trust in the Hal Settlement R.O.R.

published in the year 1984 and thereafter the IDCO applied to the Tahasildar, Kujanga with different Mutation cases to mutate the case lands in its favour. The Tahasildar, Kujanga on verifying the physical possession, lease deeds and possession certificate, has mutated the case land in favour of the IDCO and the IDCO has been paying the ground rent to the State Government through the Tahasildar, Kujanga. It is stated that the intention of the IDCO is to develop the industry near the port area and in the meantime Ac. 75 00 of land has been leased out to M/s. Nilanchal Floride and Chemical Ltd. and Ac. 28.82 decimals in favour of Total Gas Ltd. and rest of the areas are under the process of making roads and establishing industries.

4. The defendant claims that the plaintiff-petitioner had neither a prima facie

case nor balance of convenience in its favour and therefore the petition under Order 39, Rule 1 of the C. P. C. has rightly been dismissed by the courts below.

5. In this Court, the petitioner has filed copies of very many documents in support of its claim of possession including a minute of the meeting with the Revenue Divisional Commissioner (Central Division) attended by the petitioner's Officers, Revenue Officers and the Deputy General Manager (Land) of IDCO, the opp. party wherein it was decided that the Paradip Port Trust shall apply to the Tahasildar for mutation of the lands of various mouzas including mouza - Bhitargarh comprising of Ac.488.07 decs, of Government land and Ac.236.24 decimals of private land acquired for Paradip Port and the letter dated 11-5-1999 of the petitioner addressed to the Tahasildar in accordance with the minutes for appropriate action in that behalf. The letter of the Commissioner. Railway Coordination and Special Secretary to the Government. Commerce and Transport (Transport) Department to the Chairman, Paradip Port Trust and Chairman, IDCO dated 23-10-1999. The map of the land in village Bhitargarh in occupation of the Paradip Port etc. is filed to indicate that the petitioner is in peaceful possession of the land in the question possession being delivered.

6. Mr. A. Mukherjee, learned Senior Advocate for the opposite party has raised a preliminary objection that if the dispute to title is raised by the defendant, no suit for injunction would lie and, therefore, the suit itself being not maintainable, question of injunction would not arise. The learned counsel has referred to the decision of a learned Single Judge in Braja Kishore Sahu and others v. Smt. Sailabala Sahu and others; (1995 (XI) OLR 348. Paragraph-5 of the aforesaid judgment relied on by the learned counsel which reads thus :

""Before delving into the merit of the case, it is necessary to state how the question of maintainability of the present suit for permanent injunction simplicitor lost sight of both the courts below. It is fundamental that a true owner or a person having possessory title can maintain a suit for injunction against a trespasser. But if the defendant refutes his claim and asserts his own title, then determination of the question of title becomes necessary and in that case plaintiff may amend his pleading and seek of a declaration of title or else the Court will have no other alternative but to dismiss the suit, the reason being that in a suit for injunction question of title cannot be gone into and decided. Needless to say that in a suit for declaration with consequential relief, plaintiff is required to pay and volorem court-fee on the value of relief sought. Trial court should keep itself alive of these legal aspects even if the defendant has not raised the question of maintainability of the suit either in the pleading or during trial."

It is, therefore, the contention of the learned counsel that if the defendants refute the claim of the plaintiff in a suit for permanent injunction and asserts his own title, then determination of the question of title becomes necessary and in that case, it is open to the plaintiff to amend the pleading and seek for declaration of title or else the courts have no alternative But to dismiss the suit

since in a suit for injunction question of title cannot be gone into and decided.

7. A. K. Parija, learned counsel for the petitioner, however, contends that it is the settled law that even in a suit for permanent injunction the question of title has to be gone into incidentally and therefore, the contention that where title is disputed by the defendant a suit for permanent injunction would not lie is fallacious. Learned counsel has referred to a Division Bench decision in *Rahas Bewa Vs. Kanduri Charan Sutar and Others*, The Division Bench of this Court in *Rahas Bewa's* case (supra) has observed that even for the grant of injunction it would be necessary for the Court to adjudicate upon the question of title or possession. There would be many suits where who the rightful owner is has to be ascertained even when the relief is one of permanent injunction simplicitor. Invariably, the question of possession in presentee will have to be taken into account. Since the suit is pending and is otherwise ready for hearing. I do not intend to delve into this point of maintainability at this stage in a revision against an order refusing injunction. It is not disputed by the learned counsel for the parties that the suit is otherwise ready for bearing.

8. Now coming to the merit of the case, it appears that the learned trial court in its order dated 9-7-1997 has not been able to come to a conclusion as to who is in possession of the disputed land. The court observed in the concluding paragraph of its order as follows :

".....It further shows that out of the acquired area of Ac. 1580.77 petitioner claimed to be in possession of Ac. 1226.24 in village-Bhitargarh together with Ac. 19.11 decs, in village Jayachandpur. As a matter of fact, now it remains that identification of suit land is of paramount importance. Relying on a map dated 18-9-1996 petitioner specify suit land which is disputed by opposite party on the ground that they were not parties to it but Government was a party to it and that it does not corresponds to all suit plots as pet plaintIn view of all such long dispute between parties, the real dispute can be decided considering oral as well as documentary evidence during hearing of the suit and early disposal of the suit is warranted in this case in view of such matter." It is amply clear from the order of the learned Civil Judge that it could not come to a conclusion as to who was in real possession of the land whether the plaintiff-petitioner in terms of the Government Order and Notification or the opp. party-defendant, by virtue of the subsequent grant of lease in its favour.

9. The petitioner moved the learned Addl. District Judge against the order of the learned Civil Judge (Jr. Division) refusing to grant the ad interim order of injunction during the pendency of the suit, It appears that the learned lower appellate court observed that the appellant claims possession and title over the property basing on some documents and Hal Settlement R. O. R. of the year 1984, whereas the respondent on the other hand claims title and possession over the suit property on the basis of some documents and mutation order of Tahasildar, Kujang, But however, perhaps on the observation that there is no material to show if any construction is there over the suit property, he was

pursuaded to affirm the order. The Court however observed that in order to resolve the dispute between the parties, evidence has to be led in the suit and in an application under Order 39, Rules 1 and 2, C. P. C., this dispute cannot be resolved since both the parties are claiming the property, agreeing with the view of the trial court that it could not arrive at the conclusion as to who is in possession of the suit property. However, taking a view that there is no material to show that the appellant would suffer irreparable loss if injunction is not granted and the balance of convenience is in its favour, it has affirmed the view of the court below. The appellate court has not itself considered and decided, as to whether the appellant-petitioner had a prima facie case and there is likelihood of suffering irreparable loss and the balance of convenience is in its favour.

10. Undisputedly, the land in question was acquired by the Commerce Department of the State Government for development work of Paradip Port, but subsequently, according to the defendant-opp. party, the land was surrendered to Government and ultimately was given in possession to the respondent by the Tahasildar, Kujang in the year 1983 and it took over possession. If the land was undisputedly acquired for the purpose of the Paradip Port and delivery of possession was made, then it has to be also found out as to in what manner a portion of the land was surrendered to the Government and the consequence thereof. Necessarily therefore, it has also to be found out as to whether the land acquired for a particular purpose and possession was delivered, it could be utilised and leased out for any other purpose as has been alleged. But the learned courts below, while considering the irreparable injury and balance of convenience, ought to have taken note of the fact that the defendant-opp. party had specifically claimed that it has an intention to release out the land to the different companies/institutions for industrial purpose.

11. While considering the question of granting temporary injunction, the learned courts below are required to see that there is a bona fide contention between the parties and then on which side in the event of success, will lie the balance of convenience, if the injunction is not issued. The real point to be considered is whether there is a substantial question to be investigated and whether matters should not be preserved in status quo until that question could finally be disposed of. It is also the settled principle that where perpetual injunction is prayed for and the plaintiff applied for a temporary injunction, the court should grant a temporary injunction, if the effect of not granting such an injunction will be to deprive the plaintiff for ever of the right claimed by him in the suit. The object of injunction in such a case is to preserve the status quo on granting injunction, It must be emphasised that in the matter of granting temporary injunction it is the duty of the court to take into consideration the effective and relevant documents before it records a finding. Merely referring to the documents in the judgment is not enough and there must be some discussion about the effect of the document before a conclusion is arrived at.

12. Be that as it may. apart from the merit of the case, the suit out of which the

present ad interim injunction matter arises was of the year 1996 and it is stated at the Bar that the suit is ready for hearing. The opp. party-defendant has suffered the interim order of status quo since 24-8-1999 and in the appellate and original stage also, the ad interim injunction was granted and continued since 1996. The trial court as well as the lower appellate court have found that the real dispute can be decided considering the oral as well as documentary evidence during hearing of the suit and early disposal of the suit is warranted in this case.

13. In that view of the matter/since undisputedly there remains a substantial question to be investigated in the suit and there exists a bona fide dispute to be resolved and if during the pendency injunction is not granted, the defendant-opp. party may allot/lease out portions of the suit property to different companies and/or industrial concerns, the learned court below ought to have held that, the property in dispute should be preserved till final disposal of the suit.

14. In the aforesaid premises, I am of the considered opinion that since the suit is ready for final hearing and disposal, it should be disposed of at an early date and till its disposal, the property in dispute should be preserved by an order of status quo. It is, therefore, directed that the learned Civil Judge (Junior Division), Kujang shall commence the trial of the suit and dispose it of within a period of six months from the date of receipt of this order and during the pendency of the suit, status quo in respect of the suit schedule property shall be maintained. However, the concerned Civil Judge shall not be influenced by any of the observations made in this order while disposing of the suit on merit.

The Civil Revision is disposed of with the aforesaid observations and directions.

15. Civil Revision disposed of.