
(2003) 03 OHC CK 0073
In the Orissa High Court
Case No : Civil Revision No. 79 of 2002

Shri Shyamsundar Mishra

APPELLANT

Vs

Shri Lokanath Mishra

RESPONDENT

Date of Decision : 20-03-2003

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115

Citation : (2003) 1 OLR 497

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

Bench : Single Bench

Advocate : D. Mishra and D. Rout, for the Appellant; S. Nayak, B. Mohapatra and N.K. Pani, for the Respondent

Final Decision : Allowed

Judgement

P.K. Tripathy, J.—Heard.

This Civil Revision stands disposed of at the stage of admission after hearing learned counsel for both the parties.

2. Plaintiff in Title Suit No. 326 of 1989 of the Court of Addl. Civil Judge (Sr. Division), Puri is the petitioner whereas defendant No. 4 in that suit is the opposite party. It is not disputed at the Bar that plaintiff has instituted the said suit, inter alia, praying for the relief of permanent injunction. His claim is based on a case of joint possession of the suit premises with his brother who is Defendant No. 3. According to the further case of the plaintiff the suit premises is a part of the dwelling premises of the family and after suffering from leprosy the Defendant No. 3 having abandoned that premises and living outside and thereby leaving the whole area including the disputed area in the exclusive possession of the plaintiff and his family members. Defendant No. 4 has purchased the disputed property from Defendant Nos. 1 and 2 and the said two defendants purchased the disputed property from Defendant No. 3. According to the case advanced by Defendant No. 4, Defendant No. 3 was the absolute owner of the

premises inasmuch as the disputed property being a self-acquired property of the father of the plaintiff and Defendant No. 3, a patch of land comprising of the suit property was gifted away by the father in favour of Defendant No. 3 and he transferred the same in favour of the defendant Nos. 1 and 2 by executing and registering a sale deed for consideration and therefore the claim of the plaintiff regarding joint possession with defendant No. 3 and thereafter exclusive possession as a dwelling premises after defendant No. 3 resided outside are far from truth and reality.

3. Being abreast of such facts and pleadings learned Civil Judge (Sr. Division), Puri as per order passed on 7.1.1995 granted interim protection in favour of the plaintiff and passed order of temporary injunction on the ground that the disputed property is a part of homestead land. Learned Ad hoc Addl. District Judge (FTC-II), Puri as the appellate Court in Misc. Appeal No. 38/13 of 2002/95 has set aside that order of injunction as per the impugned judgment delivered on 23.1.2002. The appellate Court has stated that -

"No doubt the suit plots, including Plot No. 332 are recorded as homestead land, but the portion alienated to defendant No. 3, by way of a gift-deed, cannot be deemed to be a part of the undivided dwelling-house, as the same is deemed to have been separated from the dwelling-house, since 1969 when the gift-deed, was executed."

The above quoted inference of the appellate Court may or may not be sustainable and that will depend on the evidence that will be adduced by the parties in course of hearing of the suit, but in the absence of positive proof in that respect the appellate Court could not, and should not have made such a conjecture to interfere with the order of the learned Civil Judge (Sr. Division). The parties shall be at issues on the said aspect during the trial of the suit and they may prefer to adduce relevant evidence in support of their respective stands and then only the aforesaid issue can be settled with due reference to the evidence on record. Under such circumstance, this Court finds that the appellate Court exercised the jurisdiction vested in him with material irregularity by presuming existence of certain facts which are yet to be established by either of the parties.

4. It is stated by learned counsel for the petitioner that at the stage of issue of notice on admission on 19.4.2002 this Court passed order in Misc. 3 Case No. 142 of 2002 directing the parties to maintain status quo with respect to the suit schedule properties and that order is still continuing. He further states that plaintiff is not only willing but also eager for early disposal of the suit which is by now is a decade old and therefore the Court below may be directed to dispose of the suit as expeditiously as possible and the plaintiff is willing to cooperate by adducing relevant evidence without causing any delay and therefore the order of status quo be directed to be maintained till disposal of the suit and this revision application be accordingly disposed of. Learned counsel for defendant No. 4/ opposite party while not conceding to the prayer for continuing the order of

status quo, however, states that defendant No. 4 has no objection for early disposal of the suit as he is ready to adduce his evidence and shall not make any attempt to delay disposal of the suit.

5. In view of the aforesaid contention of both the parties, this Court feels it just and proper to maintain the order of status quo for a period of eight weeks with direction to both the parties not to proceed with any construction or to change the nature and character of the suit property during the aforesaid period and they undertake to abide by the same. Petitioner also undertakes to produce a certified copy of this order in the Court below within a period of two weeks. Therefore, both the parties are directed to appear before the Court below on 3rd April, 2003 when petitioner shall produce a certified copy of this order in the Court below. Thereafter, learned Addl. Civil Judge (Sr. Division), Puri, i.e. the trial Court, shall fix a short date for taking up hearing of the suit and shall try to dispose of the suit as far as practicable within a period of six weeks from that date. If for any reason the suit could not be disposed of within the above targeted period, then the Court below shall consider whether to extend the order of status quo for any further period. At that time the Court below shall consider and if it shall find that the delay is attributable to any conduct of the plaintiff, then he may refuse to extend the order of status quo any further. On the other hand, if such delay shall be attributable to any of the conducts of Defendant No. 4/ opposite party or any other defendant excluding defendant No. 3, then status quo order shall be extended and be directed to continue until disposal of the suit.

6. For the reasons indicated above, while setting aside the order of appellate Court and allowing the Civil Revision the order of injunction passed by learned Addl. Civil Judge (Sr. Division), Puri stands modified by directing the parties to maintain status quo in the aforesaid manner. Parties are directed to bear their respective cost of litigation in this forum. Hearing fee is assessed on contested scale.