

(2001) 03 OHC CK 0018

In the Orissa High Court

Case No : Miscellaneous Appeal No. 592 of 2000

Smt. Nisamani Behera

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 23-03-2001

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1, Order 39 Rule 2
Orissa Public Premises (Eviction of Unauthorised Occupants) Act, 1972 — Section 14

Citation : (2001) 1 OLR 625

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

Bench : Single Bench

Advocate : B. Baug, J. Pal, A. Pal, S.K. Das, A.R. Naik and B.R. Das, for the Appellant; Additional Government Advocate (Rs. 1 to 3), N. Patra, S.K. Pattnaik, A. Patra and R. Sarangi (R-4), for the Respondent

Judgement

P.K. Misra, J.—Heard Sri B. Baug, learned counsel for the appellant. Sri N. Patra. learned counsel for the intervenor and the learned Addl. Government Advocate for the State.

2. The plaintiff is the appellant against the order of the trial Court rejecting her application filed under Order 39, Rules I and 2 of the CPC (hereinafter referred to as the "Code").

3. The appellant claims to be in possession of the disputed land for more than thirty years and has perfected title by adverse possession. It is stated by the appellant that the State Government is trying to evict her forcibly from the disputed land.

4. The trial Court held that the document filed by the petitioner was a letter written in 1996 by the Executive Engineer, Capital Construction Division No. 1 to the Estate Officer-com-Joint Secretary to Government of Orissa, G.A. Department, showing that the appellant was in possession. From the aforesaid document, the trial Court came to the conclusion that the plaintiff was in

possession only from the year 1996 and since a prima facie case had not been made out, no injunction should be granted. The trial Court further observed that since a proceeding under the Orissa Public Premises (Eviction of Unauthorised Occupants) Act, 1972, (hereinafter referred to as the "O.P.P. Act") had been initiated. Section 14 of the said Act stood as a bar to the jurisdiction of the Civil Court for entertaining the suit.

5. In appeal, the prayer for intervention by the person in whose favour lease has been granted by the State Government has been allowed.

6. The learned counsel appearing for the appellant has contended that the observation of the trial Court that the suit is not maintainable in view of Section 14 of the O.P.P. Act may not be correct in view of the decision of the Supreme Court reported in Government of Andhra Pradesh Vs. Thummala Krishna Rao and Another, which has been followed by this Court in State of Orissa Vs. Bhanu Mali (Dead) Nurpa Bewa and Others, In view of the decision of the Supreme Court, the view taken by the trial Court cannot be accepted. Since the matter has to be again dealt with by the trial Court, it is not necessary to express any final opinion on this aspect.

7. The trial Court has held that the plaintiff has failed to make out a prima facie case as no documentary evidence has been produced to show the possession for more than thirty days. It is well-known that while deciding the petition for injunction, the Court has to consider prima facie case, balance of convenience and irreparable loss (See Dalpat Kumar and another Vs. Prahlad Singh and others, . It is well settled that for establishing a prima facie case, the plaintiff is not required to prove the case to the hilt and if upon consideration of the materials on record it can be said that an arguable case has been made out, it may be stated that a prima facie case has been established. Keeping in view the above it can be stated at this stage that a prima facie case has been made out. It appears that the trial Court has not at all considered the question of irreparable loss and balance of convenience. Since it is the admitted case that the plaintiff is in possession (the dispute is only relating to the nature and duration of possession), the plaintiff would definitely suffer irreparable loss unless the plaintiff's possession is protected during the pendency of the suit and the inconvenience faced by the plaintiff would be higher than the inconvenience faced by the defendants. Keeping in view the above aspect, I am inclined to grant interim injunction.

8. The learned counsel appearing for the intervenor submits that since the lease has been granted in favour of the intervenor for the purpose of construction of a "Janata Hotel" and since injunction is being granted, the intervenor will suffer due to delay in disposal of the suit. He has prayed that there should be a direction for early disposal of the suit. Such a submission is reasonable. It appears that the State has filed the written statement. It is further stated that the prayer of the present intervenor for being impleaded as a party in the suit is under consideration. Since the intervention petition has been allowed in the

present appeal, I think interest of justice would be served by impleading the intervenor as a party in the suit. Learned counsel for the intervenor undertakes to file written statement within a period of three weeks from the date of service of the copy of the plaint. Learned counsel for the appellant undertakes that the copy of the plaint shall be served within two weeks on the counsel appearing for the intervenor in this Court.

9. Learned counsel for the appellant also submitted that it would be necessary to amend the plaint as the intervenor is being impleaded as a party in the suit. If the appellant would successfully prove her title by adverse possession, the lease granted by the State Government would be of no consequence and would not be binding on the plaintiff. Similarly, if the plaintiff fails to prove the title by adverse possession, the plaintiff has got no say in the matter of lease granted to the intervenor. Therefore, it is not necessary to amend the plaint.

10. The suit should be disposed of as expeditiously as possible, , preferably on or before 18th October, 2001, under intimation to this Court. It goes without saying that the suit should be disposed of on its own merit without being influenced in any manner by any of the observations made in the present order or in the order of the trial Court. The plaintiff undertakes to co-operate in the early disposal of the suit.

11. The Misc. Appeal is accordingly disposed of. There will be no order as to costs.