

(2006) 06 OHC CK 0003

In the Orissa High Court

Case No : Writ Petition (C) No. 5385 of 2006

The Golden Land Developer Ltd.

APPELLANT

Vs

Patitapaban Sahu and Others

RESPONDENT

Date of Decision : 21-06-2006

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1, Order 39 Rule 2
Criminal Procedure Code, 1973 (CrPC) — Section 144

Citation : AIR 2006 Ori 173 : (2006) 1 OLR 936 Supp

Hon'ble Judges : L. Mohapatra, J

Bench : Single Bench

Advocate : S.P. Mishra, Devashis Panda, D.R. Nanda, D.P. Dhal, A.K. Panda and A.K. Budhia, for the Appellant; Manoj Kumar Mishra and P.K. Das, for the Respondent

Final Decision : Dismissed

Judgement

L. Mohapatra, J.—This writ application is directed against the order dated 9th March, 2006 passed by the learned Second Additional District Judge, Berhampur in F.A.O. No. 3 of 2006 dismissing the appeal and confirming the order dated 25th January, 2006 passed by the learned Civil Judge (Sr. Division), Berhampur in LA. No. 107 of 2005.

2. Plaintiff is the petitioner before this Court. The suit has been filed by the petitioner for declaration of right, title, interest and possession over the suit land with a prayer for permanent injunction. In the said suit, an application under Order 39, Rules 1 and 2 of C.P.C. was filed by the petitioner to restrain the defendants-opposite parties from interfering in the possession and enjoyment of the suit lands by the petitioner. The case of the petitioner is that it is engaged in development of real estate and establishment of housing projects. It had purchased the suit property covering an area of Ac.5.841 decimals under Khata No. 697 in Mouza Jagadalpur under Berhampur Tahasil under a registered sale deed on 25-5-2005 from one V. Ravikumar Gupta. On 2-11-2005, one of the

employees of the petitioner found that the defendants-opposite parties 1 to 3 were measuring certain portions of the suit property to lay an approach road over plot No. 161. When the employee protested, he was threatened. This resulted in initiation of a proceeding u/s 144, Cr.P.C. before the Executive Magistrate. From the affidavit filed by the defendants-opposite parties, it transpired that plot No. 161 belonged to one M. Apamma and on her death, her daughters succeeded to the property, but the same has been wrongly recorded in the name of A. Seetharamaya Chetty. In view of the above, the defendants 4 to 6 moved the Joint Commissioner, Settlement and Consolidation and got it mutated in their favour. They executed a general power of attorney in favour of B. Bhagi Rao and the said power of attorney holder entered into an agreement with defendants 1 to 3 and delivered possession of the said property to them. According to the plaintiff-petitioner, the said M. Apamma had no manner of right, title, interest and possession over the said plot and, therefore sought for an order of injunction as stated above. The contesting defendants-opposite parties filed objection stating therein that the lands in Sabik Survey Nos. 212/2, 213, 214, 216, 217 and 218 belonged to two brothers namely, P. Narayan Swami and P. Suryanarayana. Both of them died some time in the year, 1940 and 1954 respectively while in joint-ness. M. Apamma purchased Ac.2.11 decimals from western portion of survey No. 212/2 under a registered sale deed sometime in the month of March, 1972. The predecessor-in-interest of the petitioner's vendor had no manner of right, title and interest over the suit property. During the settlement operation in the year, 1976 these lands were wrongly recorded in the name of A. Seetharamaya Chetty, the predecessor-in-interest of V. Ravi Kumar Gupta, the vendor of the petitioner. After death of M. Apamma, her legal heirs moved the Joint Commissioner, Settlement and Consolidation under Orissa Survey and Settlement Act, 1959 challenging the wrong recording of their purchase property in favour of A. Seetharamaya Chetty and the Joint Commissioner found that the suit plot No. 161 under Khata No. 697 extending to an area of Ac. 1.881 decimals corresponding to Sabik plot Nos. 212/2, 212/3, 212/ 4, 212/5, 212/12 and 215 of Sabik Khata No. 187 stood recorded in favour of P. Ratnalu, the predecessor-in-interest of M. Apamma and, accordingly directed that the suit plot i.e. plot No. 161 should be recorded in the name of successors-in-interest of M. Apamma. The other defendants also filed objections by putforthing their respective case.

The learned Civil Judge (Sr. Division) on analysis of the materials placed before it prima facie found that admittedly A. Seetharemya Chetty died long back and much prior to publication of record of right in the year 1976. The Court also found that there is nothing on record to show as to how Venketratnam succeeded to the said property after death of A. Seetharamaya Chetty whereas the sale deed No. 838 of 1972 discloses that the predecessor-in-interest of the vendors had title to the property since 1940. The Joint Commissioner in his order dated 22-10-2005 having observed that the Settlement Authorities erred in recording the case land and alienation of the property was not brought to the notice of the

Settlement Authorities prior to publication of the R.O.R., such a mistake was committed. The Court also observed that the petitioner has not filed any document to show that Venkatratnam had absolute title over the suit property and the document of the year, 1976 relied upon by the petitioner also does not show that the vendor of the petitioner had acquired prima facie title and possession over the suit property after death of Venketratnam. On the basis of such finding, the learned Civil Judge rejected the petition. In appeal also the learned Additional District Judge came to the same finding and dismissed the appeal.

3. Shri S.P. Mishra, the learned Senior Counsel appearing for the petitioner submitted that the document on which reliance has been placed by the petitioner prima facie shows title of the petitioner over the suit property so also possession and, therefore the prayer for injunction could not have been refused. It was also contended by the learned Counsel that if no order of injunction is granted and the defendants-opposite parties are permitted to make construction, in the event, the petitioner succeeds in the suit, it would not be in a position to use the land the way it desires and, therefore, the opposite parties should be restrained from making any change in the suit land till disposal of the suit. The learned Counsel appearing for the contesting opposite parties, on the other hand, submitted that the petitioner having failed to prove prima facie title of its vendor and both the Courts having rejected the prayer for grant of injunction, there is hardly any scope for interference by this Court.

4. As discussed earlier, both the Courts have found that there is no material on record to show that the vendor of the petitioner had prima facie title over the suit property. This finding of fact is based on analysis of evidence available before the Court. On analysis of the reasons given by the Courts below, it also appears that the petitioner has not been able to prove that its vendor had prima facie title over the suit property whereas the order of the Joint Commissioner goes a long way to support the case of the defendants-opposite parties. Both the Courts having concurrently found that the petitioner has failed to prove prima facie title of its vendor, I am of the view that in exercise of writ jurisdiction, there is hardly any scope for disturbing the concurrent finding of fact in absence of any material to show that the petitioner's vendor had prima facie title over the suit land.

5. I, therefore, do not find any merit in the writ application and the same is dismissed.