

IN THE COURT OF CIVIL JUDGE , KHURDA

Present : - Shri Abhilash Senapati, B.A, LLB
Civil Judge , Khurda.

IA-- 26/2014

Budhadev Mohapatra Petitioner

Vs

Baladev Mohapatra. Opposite Party

*Advocate for the Petitioner :- Shri T.Baral Adv
& Associates .*

Advocate for the Opp. Party :- Exparte

Date of Hearing :- 07.08.2014

Date of Order :- 07.08.2014

ORDER :-

This order arises out of a petition under *Order 39, Rule 1 and 2* C.P.C, filed by the petitioner praying to prohibit the O.P's from alienating the suit land in any manner such as sale , gift, mortgage, power of attorney etc, in favour of others, till disposal of the suit otherwise the petitioner may suffer from irreparable loss .

Ld counsel for the plaintiff / petitioner has stated that he

had filed the original suit for declaration and permanent injunction against the OP in respect of the suit land. The suit properties are the joint properties of the petitioner and O.P and they are possessing it jointly as it has not been divided in metes and bounds in between them. As the OP is not pulling on well with the petitioner , the OP is taking attempt to alienate the suit land in favour of some outsiders with an aim to deprive the petitioner from exercising his right over the suit land. On 29.3.14 the OP tried to contact with some outsiders to sell the suit land and thereby to dispossess the plaintiff but due to the protests by the plaintiff the same could not be materialized. On the contrary the OP threatened to sell the suit land within a short period of time. The petitioner has a good prima-facie case and that the balance of convenience is in his favour and if the O.P is not estopped from alienating the suit land in any manner such as sale , gift, mortgage, power of attorney etc, in favour of others, till disposal of the suit otherwise the petitioner may suffer from irreparable loss and injury .

The OP although had appeared but were subsequently made exparte as the did not take part in the petition hearing despite several opportunities and also failed to take any steps in that regard. Hence this petition was taken up in exparte.

To get relief under Order 39, Rule 1&2 CPC, the petitioner needs to prove :-

- 1) *Prima Facie case* ;
- 2) *Balance of Convenience* ;
- 3) *Irreparable loss and Injury* .

The plaintiff petitioner by filing his ROR over the suit land has been able to prove his prima facie case. The plaintiff/petitioner has clearly stated that the suit land is the joint property of the parties. The ROR filed by the plaintiff also shows the same. Coming into the question of balance of convenience and irreparable loss and injury it is seen that the suit land is a joint property and when the plaintiff has prayed for declaration of half of the land therein, in his favour, then at this stage if the suit land would be alienated then the said transaction would surely cause severe irreparable loss and injury to the plaintiff. Hence at this stage when the OP has not filed any objection and the plaintiff prima facie having a definite share over the suit land, the plaintiff would suffer irreparable loss and injury if the OP are not injuncted or prohibited from alienating the suit land in any manner . Hence ordered.

ORDER

The Misc case be and the same is allowed on ex parte against the OP but without cost. The OP is temporarily injuncted and prohibited from alienating the suit land in any manner till disposal of the suit. The Misc case is accordingly disposed of.

Dictated ,

(Abhilash Senapati)

Civil Judge, Khurda.