

07.08.2014

This order arises out of a petition under *Order 39, Rule 3* C.P.C, filed by the petitioner praying to ad-interimly injunct the OP's from the suit land and from not creating any disturbance till disposal of the suit.

Ld counsel for the plaintiff / petitioner has stated that he had filed the original suit for permanent injunction and other consequential relief against the defendant-OP's. The owner is in peaceful possession over the suit land having his right, title and interest on it which he had purchased by a Registered sale deed bearing No 11141200131. The petitioner uses the suit land as a part and parcel of his Gharbari land. The OP's have got no manner of right, title, interest and possession over the suit land but with an aim to achieve some illegal gains the O.P's are creating disturbance over the suit land. On 01.08.2014 the OP's started to dig plinth over the suit land but due to vehement protest by the petitioner the O.P's could not succeed. Again on 31.07.2014, the OP's started creating disturbance with the petitioner and tried to dig plinth over the suit property and only after the protest of the petitioner he left the suit land, after threatening to take forcible possession for construction of house over the same within a short span of time by gathering sands, stones etc. The petitioner has a prima facie case, the balance of convenience also lies in his favour and he would suffer irreparable loss and injury if the OP's will not be injuncted to enter upon the suit property and from raising any construction over the same disposal of the suit .

To get relief under Order 39, Rule 3 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 Registered sale deed over the suit land has been able to prove his prima facie case. However as regards, Balance of Convenience and Irreparable loss and Injury is concerned it is seen that, if any order would be passed without hearing the O.P's then in fact the O.P's would suffer irreparable loss and injury. Hence, at this stage, I am not inclined to allow the petition under Order 39, Rule 3 CPC, but keeping into view for the safe keeping of the property along with the submission of the counsel for protection of the property an order of status quo is very essential. Hence ordered.

The petition under O-39,R-3 stands rejected but both parties are directed to maintain status quo over the suit land till appearance of O.P's , for preservation of the suit property. The petitioner is directed to cause service of this order to the OP and to file affidavit before this court by tomorrow with respect to issuance of notice . Put up on 21.08.2014 for appearance and filing showcase .

Dictated ,

(Abhilash Senapati)

Civil Judge, Khurda.