

**IN THE COURT OF THE ADDL.DISTRICT JUDGE, BHUBANESWAR**

Present:

Shri A.C.Behera, LL.B.,  
Addl. District Judge,  
Bhubaneswar.

**F.A.O. NO.21/153 of 2014/12**

(Arising out of final order dtd.20.10.2012 passed by the learned Civil Judge, Senior Division, Bhubaneswar in I.A.No.396 of 2005 U/o.39, R. 1 & 2 r/w.Sec.151 of the C.P.C being the out-come of C.S.No.516 of 2005).

Dated, this the 9<sup>th</sup> day of January, 2015

Smt. S.B. Parida @ Mansingh,  
aged about 40 years,  
W/o-Bidyadhar Manasingh,  
At-Dangua, P.O.-Ankulachati,  
Dist.-Khurda.

..... Plaintiff/Appellant.

-Versus-

1. Sri Krushna Chandra Jena,  
aged about 40 years,  
S/o-Bhajananda Jena,  
At.-Baragarh, P.O.-B.J.B. Nagar,  
Bhubaneswar-14, Dist.-Khurda.
2. Allotment Officer, B.D.A., Bhubaneswar  
Dist.-Khurda.
3. Vice-Chairman, B.D.A., Bhubaneswar,  
Dist.-Khurda.

... Defendants/Respondents.

Counsel for the Appellant : Sri B.Mansingh & his associates.

Counsel for the Respondents : N o n e

Date of Hearing : 02.01.2015

Date of Judgment : 09.01.2015

### **J U D G M E N T**

This is a miscellaneous appeal U/O.43 Rule 1(r) of the Civil Procedure Code, 1908, which has been preferred against the final order dated 20.10.2012 passed in I.A. No.396/2005 by the learned Civil Judge, Senior Division, Bhubaneswar (arising out of C.S. No. 516 of 2005) U/O.39 Rule 1 and 2 r/w. Section 151 of the C.P.C., wherein, the I.A. No.396/2005 was dismissed on contest against the O.Ps without cost.

The appellant and respondents were the petitioner and opp.parties and as well as plaintiff and defendants respectively before the learned Court below in I.A. No.396/2005 and in the suit vide C.S. No.516/2005.

2. The factual back grounds of this appeal, which prompted the appellant for preferring of the same is that, the suit land belong to the O.P. Nos. 2 & 3 and the same was initially allotted in favour of O.P.No.1 by O.P.Nos. 2 & 3 subject to deposit of the lease money thereof. But when the O.P.No.1 failed to deposit the lease money of the suit land, then as per a triparty agreement between the petitioner and the O.Ps, the petitioner deposited the lease money of

the suit land before the O.P Nos. 2 & 3 and O.P. Nos. 1 & 3 were agreed to lease out the suit land in favour of the petitioner. But subsequently, the O.P.Nos. 2 & 3 did not keep their promise written in the agreement and tried to lease out the suit plot in favour of the O.P.No. 1 instead of the petitioner. For which, without getting any way, the appellant filed the suit vide C.S. No. 516/2005 against the O.Ps praying for specific performance of contract and so also for permanent injunction against the O.Ps/defendant in respect of the suit land and she (plaintiff) also filed I.A. No.396/05 U/O.39.R.1 & 2 r/w. Sec. 151 of C.P.C. praying for restraining the O.P. Nos. 2 & 3 from recording the suit land in favour of O.P.No.1 and also to restrain them ( O.P. Nos. 2 & 3) from delivering the possession of the suit land in favour of the O.P.No.1 till the final disposal of the suit.

3. Having been noticed from the learned Court below, out of the O.Ps, the O.P. Nos. 2 & 3 filed their show cause denying the aforesaid allegations of the petitioner against them and also further stated that, the suit of the plaintiff is not maintainable against them, for which, she is not entitled for any relief of interim injunction. But the O.P.No.1 did not choose to file any written objection.

4. After hearing from both the sides, the learned Court below refused the prayer for temporary injunction of the petitioner/appellant vide order dated 20.10.2012 by holding that,

she (petitioner) has failed to establish her possession over the suit land.

5. On being aggrieved with the above order of dismissal to the I.A. No.396/2005 of the petitioner passed on dated 20.10.2012 against her (petitioner) by the learned court below, she (petitioner) has challenged the same by preferring this appeal U/O.43 Rule 1 (r) of the C.P.C against the O.Ps being the sole appellant after taking several grounds in her appeal memo.

6. I have already heard from the learned counsel for the appellant and respondent No.1, as none appeared from the side of the respondent Nos. 2 & 3 for hearing of the appeal inspite of repeated calls.

7. Basing upon the rival submissions of the learned counsels of the parties, findings made by the learned court below in the impugned order and the grounds taken by the appellant in her appeal memo, the crux of the appeal is ;

Whether the impugned order dated 20.10.2012 passed by the learned court below in dismissing I.A.No.396/2005 of the petitioner/appellant is sustainable under law ?

8. The petitioner had sought for the relief(s) i.e. to restrain the O.P.Nos. 2 & 3 ( respondent Nos. 2 & 3 in this appeal) from

recording the suit land in favour of the O.P.No.1 ( respondent No.1 in this appeal) and to restrain them (O.P. Nos. 2 & 3) from delivering the possession of the suit land in favour of O.P.No.1 till the final disposal of the appeal.

The learned court below has refused aforesaid both the reliefs of the petitioner in the impugned order by dismissing the I.A. No.396 of 2005.

The documents submitted on behalf of the respondent No.1 and so also available in the record are going to show that, the O.P.Nos. 2 & 3 being the owner of the suit plot, have delivered the possession of the same in favour of the O.O. No.1 by treating him ( O.P.No.1) as lessee under them ( O.P. Nos. 2 & 3), but till yet, the suit land has not been recorded in the name of the O.P.No.1.

It is very fundamental in civil law that, it is the duty of every court to keep the suit land as it is i.e. in statusquo during the pendency of the lis without allowing the parties to change its nature and character in any manner in order to avoid the multiplicity of the litigations.

Here in this case, when it is forthcoming from the records that, though the O.P. Nos. 2 & 3 have inducted the O.P. No.1 on the suit land as their lessee, but the suit land has not been recorded in the name of O.P.No.1 and the petitioner has sought for an interim injunction against the respondent Nos. 2 & 3 to restrain them from recording the suit land in the name of O.P.No.1 till final disposal of the suit. It appears from the record that, the O.P.Nos. 2

& 3 are not coming forward to object the above prayer of the petitioner/ appellant in this appeal. For which, at this juncture, in my view, the ends of justice will bestly be served, if the O.P. Nos. 2 & 3 will be restrained temporarily during the pendency of the lis ( suit) from recording the suit land in favour of the O.P.No.1 after setting aside the said portion of the impugned order. Because, the restrain order against the O.P.Nos. 2 & 3 from recording the suit land in favour of the O.P.No.1 during the pendency of litigation shall never cause any prejudice to the O.P.Nos. 2 & 3, rather the same will be in furtherance of rendering substantial justice in order to avoid multiplicity of litigations and to keep the suit land as it is during the pendency of the suit.

So, there is some merit to the above extent in the appeal of the appellant. For which, the same will succeed in part. Hence ordered.

### **ORDER**

The appeal filed by the appellant is allowed in part on contest. But under the circumstances without costs.

The impugned order dtd.20.10.2012 passed in I.A.No.396 of 2005 (arising out of C.S.No.516 of 2005) by the learned Civil Judge (Sr.Divn.), Bhubaneswar in refusing to restrain the O.P.Nos. 2 & 3 from recording the suit land in favour of the O.P.No.1 till final disposal of the suit is hereby set aside. But the

impugned order of the learned court below in refusing to restrain the O.P.Nos. 2 & 3 from delivering the possession of the suit land in favour of the O.P.No. 1 till final disposal of the suit is hereby confirmed. As such, an interim order of injunction is hereby passed against the respondent Nos. 2 & 3 by restraining them (O.P.Nos. 2 & 3) from recording the suit land in favour of the O.P.No.1 till the final disposal of the suit vide C.S. No. 516 of 2005.

Therefore, with the aforesaid modification of the impugned order of the learned court below, the appeal is allowed in part. Accordingly the appeal is disposed of finally. Send back the L.C.R to the learned court below forthwith.

Pronounced the judgment in the open court today, this the 9<sup>th</sup> day of January, 2015 under my seal and signature.

Dictated & corrected by me.

Addl.Dist.Judge.,BBSR.

Addl.Dist.Judge,BBSR.