

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

Present:

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

**F.A.O. NO.21/29/22 OF 2013/08/07**

(Arising out of Final order dtd.06.03.2007 passed in I.A.No.524 of 2006 U/o.39, R.1 & 2 of the C.P.C being the out-come of C.S.No.415 of 2006).

Dated, this the 8<sup>th</sup> December, 2014

Debi Prasad Mohanty, aged 44 years,  
S/o.Late Nrusingha Charan Mohanty,  
At-38, Bapuji Nagar, P.O.Bapuji Nagar,  
P.S.Capital, Dist.Khurda

.....

Appellant.

-Versus-

1. Pratap Kishore Das, aged 49 years,  
S/o.Upendra Das  
At-Rausapatna, Cuttack Town,  
Dist.Cuttack.
2. Shri Amitav Mishra, aged 31 years,  
S/o.Not known,  
At-N/5/42, IRC Village,  
P.O./P.S.Nayapalli,  
Dist.Khurda.
3. M/s.Casmo Infrastructure Pvt. Ltd.,  
Represented through its Managing Director,  
Shri Amitav Mishra, aged 31 years,

S/o.Prasanna Kumar Mishra,  
Resident of Plot No.N/5/42, IRC Village,  
Nayapalli, P.O./P.S.Nayapalli,  
Bhubaneswar, Dist. Khurda.

... Respondents.

Counsel for the Appellant : Sri J.N.Das, Adv.

Counsel for the Respondents : Sri P.K.Pattnaik, Adv.

Date of Hearing : 25.11.2014

Date of Judgment : 08.12.2014

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

This is an appeal U/o.43, R.1 (r) of the Civil Procedure Code, 1908, which has been preferred by the appellant against the final order dtd.06.03.2007 passed in I.A.No.524 of 2006 arising out of C.S.No.415 of 2006, U/o.39, R.1 and 2 of the C.P.C by the learned Civil Judge (Jr.Divn), Bhubaneswar, wherein the I.A of the petitioner vide I.A.No.524 of 2006 was dismissed on contest without costs.

2. The appellant and respondents were the petitioner and the Opp.Parties respectively before the learned court below in I.A. No.524 of 2006. Likewise, the appellant and respondents were the plaintiff and defendants respectively before the learned court below in the original suit vide C.S.No.415 of 2006, from which the above I.A. No.524 of 2006 had arisen.

3. The factual backgrounds of this appeal, which prompted the

appellant for preferring the same was that, the appellant being the sole plaintiff had approached the learned court below by filing the suit vide C.S.No.415 of 2006 against the defendants/respondents with a prayer for restraining them from making any further alienation to the suit land vide Plot No.516/1726 Ac. 0.500 decimals out of Ac. 1.000 decimals under Khata No.474/60 in Mouza-Patia under Chandrasekharpur Police Station. He (appellant/petitioner) had filed an interlocutory application before the learned court below U/o.39, R.1 & 2 of the C.P.C against the defendants by arraying them as O.Ps vide I.A.No.524 of 2006 to pass an ad-interim injunction restraining them from making any further alienation to the aforesaid suit land and to deal with the same in any manner till the final disposal of the above original suit vide C.S.No.415 of 2006.

4. The basis of claim of the aforesaid temporary injunction by the appellant/petitioner against the respondents was that, the respondent No.1/O.P.No.1 (Pratap Kishore Das) was allotted with a land vide Plot No.516/1726 i.e. the suit plot by the Tahasildar, Bhubaneswar through a lease vide W.L. Case No.958/80, to which, he had sold the same to the appellant/petitioner through his power of attorney holder Lingaraj Sahoo by executing R.S.D.No.8033 on dtd.27.11.2002 and delivered possession thereof. But subsequent thereto, the said O.P.No.1 alienated the said suit land again on dtd.16.11.2006 with some malafide intention in favour of O.P.No.2/respondent No.2 (who is the Managing Director of

O.P.No.3) only in order to create disturbance in the title and possession of the petitioner/appellant over the suit land. For which, the petitioner/appellant was compelled to file the above suit and interlocutory application against the O.Ps to injunct them (O.Ps) from making any further alienation or creation of any third party interest over the suit land.

The Opp.Parties/respondents challenged to the aforesaid prayer for temporary injunction of the petitioner by stating that, the O.P.No.1 had never given any power to Lingaraj Sahoo for selling his lease hold land vide Plot No.516/1726 i.e. the suit land. Because, the lease, which was issued to him earlier vide Plot No.516/1751 through W.L.Case No.958/80 was duly cancelled and after cancellation of the same, a new plot vide Plot No.516/1726 i.e. the suit plot was allotted to him and accordingly the R.O.R which was issued in his favour earlier in respect of Plot No.516/1751 was corrected to a new lease-hold plot vide Plot No.516/1726 on dtd.09.09.2002 and accordingly since then, he (Opp.Party NO.1) had taken possession over his new plot vide Plot No.516/1726 i.e. the suit land. The power of attorney, which was executed by him ( O.P. No.1) in favour of Lingaraj Sahoo was not for the present suit plot No.516/1726, but the same was for his earlier plot vide Plot No.516/1751, which has already been cancelled. That apart, he ( O.P. No.1) had cancelled that power of attorney dated 07.08.2002 in favour of Lingaraj Sahoo on dated 9.8.2002 before the sub-Registrar, Bhubaneswar. So since

9.8.2002, the power of attorney, which was executed by him ( O.P. No.1) in favour of Lingaraj Sahoo was not in force. The petitioner/appellant has sought for temporary injunction in respect of the suit land vide Plot No.516/1726 stating to have purchased the same through Lingaraj Sahoo. But in fact, the said Lingaraj Sahoo was not provided with any power by him ( O.P.No.1) to sell the suit land vide Suit plot No. 516/1726, for which, the sale made by him in favour of the appellant/petitioner in respect of the suit plot No.516/1726 is bad and illegal under law. So, the so-called sale deed in favour of the petitioner/appellant executed through Lingaraj Sahoo in respect of the suit land can never create any interest in favour of the petitioner/appellant, for which, he (petitioner/appellant) is not entitled for any ad-interim injunction against the O.Ps and as such, the I.A. of the petitioner/appellant is liable to be dismissed.

5. After conclusion of hearing from both the sides and on perusal of the materials available in the record, the learned court below dismissed to the interlocutory application of the petitioner on contest vide I.A.No. 524 of 2006 U/o. 39, R.1 & 2 C.P.C on dtd.06.03.2007 by holding that, the petitioner has failed to establish his possession over the suit land and as such, the learned court below did not choose to exercise his judicial discretion in favour of the petitioner to injunct the O.Ps

6. On being aggrieved with the above order of dismissal to the

I.A No.524 of 2006 of the petitioner U/O.39 .R. 1 & 2 of the C.P.C on dtd.06.03.2007, he (petitioner) has challenged the same by preferring this appeal against the O.Ps by arraying them as respondents after taking several grounds in his appeal memo.

7. I have already heard from the learned counsels of the parties and so also have perused the materials available in the record.

8. Basing upon the pleadings, petitions, show cause of the parties, the rival submissions of their respective learned counsels, the observations made by the learned court below in the impugned order and the grounds taken by the appellant in his appeal memo, the crux of this appeal is ;

Whether the impugned order of dismissal to the I.A.No.524 of 2006 U/o.39, R.1 & 2 of the appellant/petitioner on dtd.06.03.2007 passed by the learned court below is sustainable under law ?

9. During course of hearing of the appeal, the learned counsel for the appellant/petitioner argued that, the ad-interim injunction, which was sought for by the petitioner before the learned court below against the Opp.Parties/respondents in respect of the suit land was not a general injunction, covering all aspects, but the same was to a very limited extent i.e. only to restrain the Opp.Parties/respondents from creating any third party interest over the suit land till the final disposal of the suit i.e. only for non-

alienation of the suit land during the pendency of the suit. To which, the learned court below should not have denied. But instead of which, the same should have been allowed for the interest of justice. As such, the impugned order passed by the learned court below is not sustainable under law.

10. But, the learned counsel for the O.Ps/respondents vehemently opposed to the aforesaid contention of the learned counsel for the appellant/petitioner by arguing that, the impugned order of the learned court below can not at all be unsustainable under law, because the petitioner has/had no interest at all over the suit land vide Plot No.516/1726, as his so-called attorney holder was not authorized to sell the said plot No.516/1726 and by the time of the execution of the power of attorney, the suit plot no.516/1726 was not allotted to him. That apart, there is no materials or document to show the possession of the petitioner/appellant over the suit land. For which, the impugned order of the learned court below in refusing his prayer to restrain them (O.Ps) from alienating the suit land can not be held to be illegal.

11. On perusal of the record it appears that, this Misc.appeal U/O.43 R.1 (r) C.P.C. was filed on dtd.15.03.2007, wherein an interlocutory application vide I.A.No.100/2007 was filed on the same day i.e. on 15.03.2007 to restrain the respondents/O.Ps from

alienating the suit land during the pendency of this Misc.Appeal. In the aforesaid I.A. No.100/2007 vide Order dtd.04.04.2007 after hearing, both the parties (appellant and respondents) were directed to maintain status-quo over the suit land until further order. The said order of status-quo, which was passed on dtd.04.04.2007 in this appeal in I.A. No.100/2007 has been continuing till yet through extension from date to dates. Accordingly, both the parties are obeying the same by respecting the said original status-quo order dtd.04.04.2007 without violating the same in any manner. In the above manner, the status-quo order over the suit land has been continuing in this appeal for about eight years as per the consent and recommendations of the parties.

12. As stated above, an interim order has been operating against the parties in respect of the suit land during the pendency of this appeal in an indirect form for about last eight years continuously without any break thereof through the direction of the court to maintain status-quo.

The law in respect of maintenance of status-quo during the pendency of the original proceeding has been highlighted in the following decisions :-

2007(II) C.L.R. Page-788-Utkal Chemists (v) Cuttack District Chemists- C.P.C. 1908. O.39, R.1 & 2- The main purpose of an interim order U/o.39, R.1 & 2 is to protect the lis during

lispendes so as to prevent future injury to any party – No order should be passed to establish a new state of things different from the state that existed at the date, the proceeding was initiated.

IV(2004) Civil Law Times (S.C.) \_age-172- Maharwal Khewaji Trust Vrs. Baldev Das – C.P.C. 1908- O.39, R.1 & 2- No court shall permit parties to alienate property and to make construction during pendency of suit- Parties are directed to maintain status-quo.

2001(3) C.C.C. (Orissa)- Page-41- C.P.C. 1908- O.39, R.1 & 2- To keep things in status-quo during pendency of litigation is the duty of court.

13. Here in this appeal, as stated above, an interim restrain order against the parties including the respondents/Opp.Parties by restraining them from alienating the suit land until further order has been continuing since 04.04.2007 till yet in the form of status-quo and the parties have been obeying such restrain order of alienation of the suit land since last eight years without violating the same in any manner. For which, at this juncture, in my view, the ends of justice will bestly be served, if such restrain order will be continued against them (parties) till the final disposal of the suit instead of allowing them (parties) to create any third party interest therein in any manner during the pendency of the suit, for no other

reason, but in order to avoid the multiplicity of litigations/proceedings .

The above conclusion finds support from the ratio of the following decision :-

IV(2005) Civil Law Times- Page-188 (Rajashtan)- Bheem Singh (v) Pratap Singh.

C.P.C.- O.39, R.1 & 2- Injunction- Restraint against alienation or transferring disputed property to any one till further orders- Interim order in force till date- In interest of justice, interim order made absolute. Since it has been in operation for a considerable period since 06.09.2004. Trial court directed to decide the suit pending before it expeditiously.

14. When the above facts and circumstances of the case as per the conduct of the parties backed by law is justifying to continue such restraint order against them (parties) till final disposal of the suit, for which, at this juncture, I found justification under law for making interference with the impugned order of the learned court below in this appeal filed by the appellant by directing the parties, to maintain their conduct as it is i.e. for non-alienation of the suit land till final disposal of the suit after setting aside the impugned order of the learned Court below.

So, there is some merit in the appeal of the appellant, the same must succeed in part. Hence ordered :-

**ORDER**

The appeal filed by the appellant is allowed in part. But under the circumstances without costs. The impugned order dtd.06.03.2007 passed in I.A.No.524 of 2006 (arising out of C.S.No.415 of 2006) by the learned Civil Judge (Jr.Divn.) is hereby set aside. Both the parties to the I.A. No.524 of 2006 i.e. petitioner and O.Ps are directed not to alienate the suit land in any manner to anybody during the pendency of the suit vide C.S.No.415 of 2006. The learned trial Court below is directed to decide the suit vide C.S.No.415 of 2006 pending before it as expeditiously as possible without resorting to any unnecessary adjournments.

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 8<sup>th</sup> day of December, 2014 under my seal and signature.

Dictated & corrected by me.

Addl.Dist.Judge.,BBSR.

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