

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

Present:

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

Dated this the 21<sup>st</sup> day of November, 2014

**F.A.O. No.05/70 of 2014/2012**

(Arising out of the final order dated 26.06.2012 U/O.39  
R.1 & 2 of the C.P.C. passed by the learned Civil Judge,  
Senior Division, Bhubaneswar in I.A.No.1120 of 2011)

Satyabhama Parida, aged about 51 years,  
W/o-Brajamohan Parida, Village-Jagannath Prasad,  
P.O.-Andharua, P.S.- Chandaka, Dist.-Khurda.

..... Appellant.

-Versus-

1. State of Odisha through the Collector, Khurda  
At/P.O./P.S./Dist.-Khurda.
2. Tahasildar, Bhubaneswar,  
At/P.O.-Bhubaneswar,  
Dist.-Khurda.

..... Respondents.

Counsel for the Appellant : Sri R.C.Mohapatra & his  
associate Advocates.

Counsel for the Respondent. : Sri L.K.Choudhury A.G.P.

Date of conclusion of argument: 28.10.2014  
Date of Judgment : 21.11.2014

### **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 by the appellant against the final order dated 26.06.2012 passed in I.A. No.1120 of 2011 U/O.39 Rule 1 & 2 of the C.P.C. ( arising out of C.S. No. 1904 of 2011) by the learned Civil Judge, Senior Division, Bhubaneswar, wherein the I.A vide No.1120 of 2011 was dismissed on contest.

2. The appellant and respondents were the petitioner and O.Ps respectively before the learned Court below in I.A. No.1120 of 2011 ( arising out of C.S. No.1904 of 2011).

The factual backgrounds of this appeal, which prompted the appellant for preferring of the same was that, She ( appellant) being the plaintiff had filed the original suit before the learned Court below vide C.S. No. 1904/2011 praying for declaration of her right, title, interest and possession over the suit land under Khata No.466, Plot No.1310 for an area Ac.0.500 decimals in mouza Jagannath Prasad under Chandaka Police Station on the basis of her adverse possession and had also prayed for injuncting them ( defendants) permanently from interfering into her possession over the suit land, as she ( plaintiff) is staying on the suit land by constructing her house thereon since the time of

her predecessors.

She (plaintiff) had also filed I.A. No.1120 of 2011 in the said suit under Order 39 Rule 1 & 2 of the C.P.C. against the defendants praying for restraining them temporarily during the pendency of the suit from creating any interference/disturbance on her peaceful possession over the suit land.

3. Having been noticed from the Court, the defendants i.e State and Tahasildar had contested the I.A. of the petitioner by stating that, the suit Plot No.1310 comprises a big area i.e. more than 54 acres and the same has been recorded in the name of the State of Orissa in the Hal R.O.R with Kissam as jungle. But, the petitioner is a stranger to the suit land and she has no manner of right, title, interest and possession thereon. For which, her application for temporary injunction is liable to be rejected with costs.

4. After conclusion of hearing and on perusal of the materials available in the record, the learned court below dismissed to the prayer for interim injunction of the petitioner i.e. to the I.A. No.1120 of 2011 vide his Final Order dtd.26.06.2012 by assigning reasons that, there is no scrap of paper or other material to show the possession of the petitioner over the same (suit land).

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

the I.A. No.1120 of 2011 passed on dtd.26.06.2012 by the learned Civil Judge (Sr.Divn)., Bhubaneswar against the petitioner, she (petitioner) has challenged the same by preferring this appeal after taking several grounds in his appeal memo.

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

7. Basing upon the pleadings of the parties, grounds taken by the appellant in her appeal memo and the observations made by the learned court below in the impugned order, the crux of this appeal is ;

Whether the impugned order dtd.26.06.2012 passed by the learned court below in dismissing the petition U/o.39, Rule-1 & 2 C.P.C of the petitioner/appellant is sustainable under law ?

8. This is an appeal U/o.43, Rule-1(r) of the C.P.C, 1908 against the rejection of the prayer for temporary injunction U/o.39, Rule-1 & 2 C.P.C.

9. It is the well settled propositions of law that, in an appeal U/o.43, Rule-1 of the C.P.C against the order of refusal of temporary injunction U/O.39, Rule-1 & 2 C.P.C like this appeal at hand, the scope of interference by the appellate court with the impugned order of the learned court below is very very limited. Because, ordinarily, the appellate court U/o.43, Rule-1 of the

C.P.C shall not make interfere with the discretionary power exercised by the learned court below in refusing the prayer for temporary injunction, unless the said impugned order is unreasonable, arbitrary, perverse and capricious.

The above propositions of law has been highlighted in the ratio of the following decisions :-

1990(Supp) S.C.C- Page-727- Wander Ltd and another (vrs) Antox India P. Ltd.

2005(4) Civil Law Times (Bombay)- Page-136- Desh Mukh (vrs) Abhinas.

Order-43, Rule-1- appeal against order U/o.39, Rule-1 & 2- the appellate court will not interfere with the exercise of discretion of the court of first instance and substitute its own discretion except where the discretion has been shown to have been exercised arbitrarily or capriciously or perversely or where the court had ignored the settled principles of law regulating grant or refusal of interlocutory injunctions.

2009(II) O.L.R-Page-796- Raj Kumar Biswal (vrs) Santilata Biswal and another at Para-10.

Injunction- temporary injunction- order refusing temporary injunction is of a discretionary character- ordinarily the court of appeal will not interfere with the exercise of discretion by the Trial Court and substitute its own discretion.

2009(IV) Civil Law Times S.C-Page-53 at Para-79-

Sonu Babu Bhambit (Vrs) Dream developers

Discretionary jurisdiction- appellate court would be slow to interfere therewith unless sufficient and cogent reasons exists therefore.

10. Here in this case at hand, the learned court below has refused to exercise his discretionary power in favour of the petitioner/appellant in allowing her prayer for temporary injunction in respect of the suit land by assigning reasons that, the suit land has been recorded in the name of the State of Orissa with Kissam as Jungle and the said R.O.R of the suit land in the name of the State of Orissa has remained unquestioned/unchallenged and there is no scrap of paper in favour of the appellant/petitioner to show her possession over the said suit land.

11. The above reasons assigned by the learned court below in rejecting/refusing the prayer for temporary injunction of the petitioner/appellant are not unreasonable. For which, it can not at all be said that, the learned court below has exercised her discretionary power in refusing the prayer for temporary injunction of the petitioner arbitrarily. Therefore, in view of the principles of law enunciated in the ratio of the decisions referred to supra, I found no justification for making any interference with the impugned order of the learned court below, as the said

order is not found unreasonable. As such, there is no merit in the appeal of the appellant. The same must fail. Hence ordered :-

**ORDER**

The appeal filed by the appellant is dismissed on contest. But under the circumstances without costs. The impugned order dtd.26.06.2012 passed in I.A. No.1120 of 2011 (arising out of C.S.No.1904 of 2011) by the learned Civil Judge(Sr.Divn), Bhubaneswar is hereby confirmed.

The appeal is disposed of finally. Send back the L.C.R to the learned court below forthwith.

Pronounced the judgment, in open Court this the 21<sup>st</sup> day of November, 2014 under my seal and signature.

Dictated & corrected by me

Addl. District Judge,  
Bhubaneswar.

Addl. District Judge,  
Bhubaneswar

