

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

Present:

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

Dated this the 21st day of November, 2014

F.A.O. No.07/68 of 2014/2012

(Arising out of the final order dated 27.06.2012 U/O.39
R.1 & 2 of the C.P.C. passed by the learned Civil Judge,
Senior Division, Bhubaneswar in I.A.No.1118 of 2011)

Sukanti Jena, aged about 42 years,
W/o-Sarat Kumar Jena, 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 Respondents. : Sri R.K.Mohanty
A.G.P.,BBSR

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 27.06.2012 passed in I.A. No.1118 of 2011 U/O.39, Rule 1 & 2 of the C.P.C. (arising out of C.S. No. 1902 of 2011) by the learned Civil Judge, Senior Division, Bhubaneswar, wherein the I.A. Vide No.1118 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.1118 of 2011 (arising out of C.S. No.1902 of 2011).

The factual backgrounds of this appeal, which prompted the appellant for preferring the same was that, she (appellant) had filed the original suit before the learned Court below vide C.S. No. 1902/2011 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.0.200 decimal 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 since the time of her predecessors.

She (plaintiff) had also filed I.A. No.1118 of 2011 in the said suit U/O. 39, Rule 1 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 aforesaid I.A. of the petitioner/appellant by filing their objection after stating therein that, the suit land is the Government land and the same has been recorded in the name of the State with Kissam as Jangle and the petitioner is not entitled for injuncting them in any manner from coming upon the suit land.

4. After hearing from both the sides, the learned Court below dismissed to the I.A. No.1118/2011 of the petitioner/appellant U/O.39, Rule-1 & 2 of the C.P.C. on dated 27.06.2012 by assigning reasons that, there is no scrap of paper in favour of the appellant/petitioner to show her possession over the suit land. Rather the unchallenged record of right is going to show that, the said suit land belongs to the state and the status thereof at the spot/field is jungle.

5. On being aggrieved with the above final order of dismissal of I.A. No.1118/2011 U/O.39, Rule-1 & 2 of the C.P.C. passed

on dated 27.6.2012 against the petitioner, she (petitioner) being the appellant has challenged the same by preferring this appeal U/O. 43, Rule-1 of the C.P.C. 1908 after taking several grounds in her 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 rival submissions of the learned counsels of the parties, findings made by the learned Court below in the impugned order, grounds taken by the appellant in her appeal memo and the pleadings of the parties, the crux of this appeal is;

Whether the impugned order of dismissal of I.A. No.1118 of 2011 U/O.39, Rule-1 & 2 of the C.P.C. passed on dated 27.6.2012 against the petitioner/ appellant by the learned Court below 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.27.06.2012 passed in I.A. No.1118 of 2011 (arising out of C.S.No.1902 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 21st day of November, 2014 under my seal and signature.

Dictated & corrected by me

Addl. District Judge,
Bhubaneswar.

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Bhubaneswar

