

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

Present:

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

**F.A.O. No.20/62 of 2014/13**

(Arising out of final order dtd.12.04.2013 passed by the learned Civil Judge, Junior Division, Bhubaneswar in I.A.No.174 of 2012 U/o.39, R. 1 & 2 r/w.Sec.151 of the C.P.C being the out-come of C.S.No.156 of 2012).

Dated, this the 10<sup>th</sup> day of February, 2015

Sri Prafulla Kumar Patra, aged about 56 years,  
S/o-Late Khali Patra, MIG-77, O.S.H.B. Colony  
Nageswar, Tangi, Lewis Road, P.S.-Lingaraj,  
Bhubaneswar, Dist.-Khurda.

..... Appellant.

-Versus-

1. Sri Pramod Nayak, aged about 45 years,  
Son of late Satya Nayak.
2. Sri Muralidhar Nayak aged about 48 years,  
S/o-Late Gatia Nayak
3. Sri Hajari @ Harihar Nayak, aged about 47 years,  
S/o-Late Rathia Nayak

4. Sri Gyanendra Nayak, aged about 58 years,  
S/o-Late Rushi Nayak
5. Sri Pratap Nayak, aged about 44 years,  
S/o-Late Satya Nayak
6. Niru Nayak, aged about 27 years,  
W/o-Late Madhaba Nayak.
7. Smt. Sandhya Nayak, aged about 27 years,  
W/o-Sri Pratap Nayak

All are resident of Sabar Sahi,  
Nayapalli, Madhusudan Nagar,  
P.S.-Saheed Nagar, Bhubaneswar,  
Dist.- Khurda.

... Defendants/Respondents.

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

Date of Hearing : 29.01.2015  
Date of Judgment : 10.2.2015

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

This is a miscellaneous 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. 12.04.2013 U/O.39. R.I & 2 r/w. Sec. 151 of the Civil Procedure Code, 1908, passed in I.A. No. 174 of 2012 arising out of C.S.

No.156 of 2012 by the learned Civil Judge,(J.D.), Bhubaneswar, wherein the I.A. vide No.174 of 2012 was allowed in part on contest against the O.P. but without cost and both the parties were directed to maintain an order of status quo over the suit land till disposal of the suit i.e. C.S. No.156 of 2012.

2. The appellant and respondents of this appeal were the O.P. and petitioners respectively before the learned Court below in I.A. No. 174 of 2012 and they were the defendant and plaintiffs respectively before the learned court below.

3. The factual back grounds of this appeal, which prompted the appellant for preferring the same was that, the respondents being the plaintiffs had filed the original suit vide C.S. No. 156 of 2012 against the appellant/defendant before the learned court below praying the main relief i.e. to restrain the defendant permanently to raise any pucca construction and/or damage any portion in respect of the suit land of the plaintiffs i.e. Khata No.319 Plot No. 527 A.0.105 decimals of Mouza Madhusudan Nagar, corresponding to Sabik Khata No.376, Sabik Plot

No.136 A0.115 decimals out of which an area A0.010 decimals alongwith other portion, which has been unauthorisedly encroached by the O.P.

4. After filing the above suit vide C.S. No.156 of 2012, the plaintiffs/respondents had filed I.A. No.174 of 2012 against the defendant/appellant praying for issuance of ad-interim injunction against him (defendant/appellant/O.P.) and his henchmen in charging the nature and character of the suit land in any manner till disposal of the suit vide C.S. No.156 of 2012.

5. The O.P/defendant/appellant challenged to the above prayer for interim injunction of the petitioners/plaintiffs/respondents by stating that, the suit land is not identifiable properly as per the schedule given in the petition of the petitioners/plaintiffs alongwith other grounds in his objection by denying the allegations alleged by the petitioners against him.

6. After conclusion of hearing, the learned court below passed the final order on dtd.12.4.2013 in I.A. No.174 of 2012 by observing that, the title of the suit land is

available with the petitioners and the O.P. has not able to establish his title over the same and the nature of the dispute relates to the identification of the suit land, it is now required for either of the parties to take the help of the survey knowing expert for proper identification of the suit land either in plot No.136 or 137 and directed both the parties to maintain an order of status quo over the suit land till disposal of the suit i.e. C.S. No. 156 of 2012.

7. On being aggrieved with the above order of status quo passed in I.A. No. 174 of 2012 on dtd. 12.04.2013 by the learned Civil Judge, Junior Division, Bhubaneswar, the O.P./defendant has challenged the same by preferring this appeal against the petitioners/plaintiffs after taking several grounds in his appeal memo.

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

9. Basing upon the petition and objection of the parties, findings made by the learned court below in the impugned order, rival submissions of the learned counsels

of the parties and the grounds taken by the appellant in his appeal memo, the crux of this appeal is :-

Whether the impugned order dtd.12.4.2013 passed in I.A. No.174 of 2012 by the learned Civil Judge, Junior Division, Bhubaneswar directing both the parties to maintain an order of statusquo over the suit land till disposal of the suit is sustainable under law ?

10. On perusal of the petition of the respondents/petitioners (through which, they had sought for ad-interim injunction), it appears that, they had sought for injunction in respect of the fraction of a plot i.e. A.0.010 decimals out of A0.115 decimals of Sabik Plot No.136.

11. In the impugned order, the learned court below has specifically observed that, the nature of the dispute relates to the identification of the suit land. It is now required for either of the parties to take the help of the survey knowing expert for proper identification of the suit land either in plot No.136 or 137.

12. The above observation of the learned court below itself in the impugned order is going to show that, the learned court below is not sure and certain as to whether the suit land is C.S. Plot No.136 or 137. But the C.S. Plot No. 137 is not the subject matter of the petition. That apart, even though, new and hal survey number is available in the area of the suit land, still then the petitioners have not sought for injunction in respect of recent hal survey numbers.

13. The petitioners have sought for injunction in respect of a very small portion of Sabik plot No.136 i.e. in respect of A0.010 decimals out of a big area i.e. out of A0.115 decimals of that plot without giving any sketch map showing the exact location of that suit plot. So, the identity of the suit land is not certain and full of ambiguity. Therefore, it is not at all possible to execute/enforce any injunction order at the practical filed in respect of the suit land due to take of its exact identity.

14. On the above aspects, the points of law has been highlighted in the following decisions.

2008(Supp-II) O.L.R.—page-800--Bijay Kumar Swain

Vrs. Harekrushna Nayak—106(2008) C.L.T—749 (Para-8):-

Where the suit is in respect of a portion of a plot, the detailed particulars are necessary for its proper identification—It is not correct to say that, a portion of plot can always be identified by giving boundaries thereof. Because, from a given boundary lines, making different angles can be drawn, in which event, the situation of the plot may still remain uncertain. Therefore, it is necessary that, the portion of the plot, which the plaintiff claim should be described with certainty, so that, the decree can be enforceable.

74(1992) C.L.T.-page—463—It is necessary that, the portion of the plot, which plaintiff claims, should be described with certainty, because , even if the court possesses the decree/order in favour of the plaintiff, the same can not be enforced against the defendant as its identification is not possible from the description of the suit property in the original plaint/petition. No effective decree/order can be passed in respect of the suit property as the description of which as given in the plaint/petition is not sufficient for its identification.

15. Here in this case at hand, when the petitioners/respondents had sought for temporary injunction in respect of a portion of a plot i.e. in respect of A0.010 decimals out of A0.115 decimals without giving any sketch map showing its exact location, for which, in view of the principles of law enunciated in the ratio of the decisions referred to supra, it can be said that, the suit land has not been described with certainty. So, in other words, it can be said that, the suit land, which has been described by the petitioners/respondents in their petition for injunction is not certain and the same is not sufficient for its identification.

16. Therefore, any injunction order like the impugned order in respect of the suit land shall not and cannot be enforced at the practical field.

17. The propositions of law is well settled as per the ratio of the decision of the Hon'ble Court reported in 50 (1980) C.L.T. (Full Bench) page—337 Srinibas Jena, after him, Madhabananda Jena (Vrs) Janardan Jena and others that “ Court should not pass an order knowing fully well that, it

would not be executable/enforceable.

As stated above, when it is held that, the impugned order of status quo in respect of the suit land given in the petition in the form of temporary injunction is not enforceable under law due to its uncertain description and insufficient for identification, then knowing fully well about its uncertainty, any order of injunction should not have been passed by the learned court below in respect of the same. So, the impugned order of temporary injunction passed on dtd. 12.04.2013 by the learned Court below is not sustainable under law. As such, there is justification under law for making interference with the impugned order of the learned court below in this appeal filed by the appellant. So, there is merit in the appeal of the appellant. The same must succeed. Hence ordered.

### **ORDER**

The appeal filed by the appellant is allowed on contest against the respondents. But, under the circumstances without costs.

The impugned order of temporary injunction passed

on dtd.12.04.2013 by the learned Civil Judge, Junior Division, Bhubaneswar in the form of status quo U/s. 39. R.I & 2 r/w. Sec.151 of the C.P.C. in I.A. No. 174 of 2012 (arising out of C.S. No.156 of 2012) is hereby set aside.

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 10<sup>th</sup> day of February, 2015 under my seal and signature.

Dictated & corrected by me.

Addl.Dist.Judge.,BBSR.

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