

IN THE COURT OF 1ST ADDL.DISTRICT JUDGE-CUM-SPECIAL
JUDGE,VIGILANCE, BHUBANESWAR.

Dist. Khurda.

Present:

Shri N. Sahu, LL.B.,
1st Addl.District Judge-cum-
Special Judge,(Vig.),Bhubaneswar.

F.A.O.No.34/11 of 2012/2008

{Arising out of order dt.25.1.2008 passed in
I.A.No.5/2008 and further arising out of
T.S.No.46/395 of 2005/1995 by the Learned
1st Addl. Civil Judge, (Sr.Divn.),Bhubaneswar}

Hemalata Behera, aged about 68 years,
W/o.Late Arjuna Behera, At-Unit No.36,
Rajarani, PO-Bhubaneswar-2, PS-Badagada,
Bhubaneswar, Dist. Khurda.

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Appellant.

-Vrs-

Lord Lingaraj Bije Bhubaneswar,
represented by the Trust Board
through its Executive Officer,
At-Old Town, Bhubaneswar,
PO/PS-Bhubaneswar, Dist.Khurda.

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Respondent.

Counsel for appellant - Sri N.K.Biswal & Associates.

Counsel for respondent - Sri R.K.Routray & Associates.

Date of hearing of argument : 01.11.2013.

Date of delivery of judgment : 14.11.2013.

J U D G M E N T

1. This appeal has been preferred against the order of the learned
1st Addl. Civil Judge (S.D.), Bhubaneswar passed on 25.1.2008 in
I.A.No.5/2008 arising out of T.S.No.395/95.

2. The present appellant who was the petitioner before the lower
Court had filed I.A.No.5/2008 praying for ad-interim injunction
restraining the O.P. from interfering in her peaceful possession or to
demolish the house over the case land. Her case in the main suit is

that as per the Sabik ROR the case land belonged to the O.P. and was lying vacant and her husband possessed the same on the Prathamastami day of 1960 and made it habitable and constructed dwelling house over it and stayed therein with his family. After his death, the petitioner continued possessing the same and has perfected her title over the case land by adverse possession. The O.P. Illegally initiated a proceeding u/s.25 of OHRE Act vide O.A.No.152/90 before the Commissioner of Endowments, Bhubaneswar and an order of eviction was passed therein along with the order of demolition of structure. Hence, the petitioner filed the suit bearing T.S.No.395/1995 which was dismissed for default on 19.9.05. for which she filed a restoration petition on 8.5.06 which was pending. In the meantime, the petitioner filed the aforesaid misc. case bearing I.A.No.5/2008 stating that the Tahasildar, Khurda (defendant No.3 of the suit) had served a notice on her on 2.1.08 for her eviction. The learned 1st Addl. Civil Judge(S.D.), Bhubaneswar vide the impugned order held that the suit filed by the petitioner was already dismissed and the petition for restoration was pending. So, it was not a fit case to invoke or exercise power u/s.151 CPC. Hence, he dismissed the misc. case.

3. The appellant has challenged that order stating that without issuing notice to other side the learned lower Court dismissed the case showing it as on contest which is illegal. Moreover, getting smell of the said dismissal order the O.P. is determined to evict her from the case land. Hence, the petitioner has prayed to restrain the O.P. from demolishing the house over the case land and from changing the nature and character of the case land.

On the other hand, the learned counsel for the respondent supporting the dismissal order of the learned lower Court submitted that in absence of pendency of any suit, such a misc. case is not maintainable. Moreover, when the defendant Nos.2 and 3 of the suit had not been arrayed as parties in the misc. case and when no prima

facie case is made over, such a case is not maintainable and there is no illegality in the impugned order.

The parties were heard. To-day, it is posted for orders.

4. Perused the materials on record. The impugned order shows that the learned lower Court did not feel it proper to exercise power u/s.151 CPC and dismissed the I.A. No.5/2008. There is no mention in the order that it was dismissed on contest. Admittedly, by the time of passing the dismissal order the original suit was already dismissed and a petition for restoration was pending. It is admitted that in the Hal ROR published in the year 1989 the suit land was recorded in the name of the O.P.-Deity. The O.P.-Deity had filed O.A.No.152/90 before the Commissioner of Endowments, Bhubaneswar and that Court passed order for eviction of the petitioner. Basing on the said order, the Collector, Khurda initiated misc. case No.34/95 and as per order of that misc. case the defendant No.3 issued notice to the petitioner for her eviction.

5. The learned counsel for the petitioner during course of hearing placed reliance on a decision reported in AIR 1986 Madras, Page-284, T.Panneerselvam-Vrs.-A.Baylis, wherein it was held that even though Order 39, Rules 1 and 2 CPC cannot be invoked when no suit is pending, but during pendency of the restoration petition the Court can grant interim injunction by invoking the inherent power u/s.151 CPC. With profound respect to that authority I found that though there is no dispute to the proposition of law decided therein, but the facts of that case are quite distinguishable from the facts of the present case. The said suit was for specific performance of contract and injunction was sought for restraining the other side from alienating the case property. Here, the facts of the case are different. The notice issued by the Tahasildar shows that as per the order of the Commissioner of Endowments in O.A.No.152/90 read with the order of the Collector in Misc. Case No.34/95, the petitioner was informed that she was liable to be evicted from the case land at any time. The main suit was

dismissed for default of the petitioner on 19.9.05 and petition for restoration of the suit was filed on 8.5.06. I.A.No.5/2008 was filed on 19.1.08 possibly after receipt of the notice, dt.2.1.08 of the Tahasildar, Bhubaneswar who had issued the notice by order of the Collector, Khurda. In I.A.No.5/2008 no specific allegation has been made against the O.P.-Deity. The defendant Nos.2 and 3 i.e. the Collector, Khurda and Tahasildar, Bhubaneswar respectively have not been impleaded as parties in the misc. case. As such, the misc. case is not maintainable. The learned lower Court was right in holding that the misc. case is not maintainable. Therefore, I do not find any illegality in the order of the learned lower Court in dismissing the misc. case. Hence, it is ordered.

ORDER

The appeal is dismissed on contest without cost. The impugned order, dt.25.1.2008 of the learned 1st Addl. Civil Judge(Sr.Division), Bhubaneswar passed in I.A.No.5/2008 is hereby confirmed.

1st Addl.Dist.Judge-cum-
Special Judge(Vig.),Bhubaneswar.

Typed to my dictation, corrected by me and pronounced in the open court on this the 14th day of November,2013 under my signature and seal of the court.

1st Addl.Dist.Judge-cum-
Special Judge(Vig.),Bhubaneswar.