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IN THE COURT OF THE DISTRICT JUDGE, KHURDA  
**AT- BHUBANESWAR.**

Present :

Dr. D. P. Choudhury, LL.M.  
District Judge, Khurda  
at Bhubaneswar.

Dated, Bhubaneswar the **22<sup>nd</sup>** day of **September**, 2014.

**F.A.O.713 of 2014**

[ Arising out of the order, dated 14/07/ 2014 passed by the  
learned Civil Judge ( Sr. Division), Bhubaneswar in I.A.  
No.72 of 2012, arising out of C.S. No. 68 of 2012]

Appolo Infra Projects Limited, having it's office at Plot No.  
2132/4738, Nageswar Tangi, P. S- Lingaraj, Po- Old Town,  
Bhubaneswar, Dist- Khurda represented by it's Chairman-Cum-  
Managing Director, Engineer, Dipak Mohanty, aged about  
43 years, S/o- Late Hrushikesh Mohanty.  
..... *Appellant.*

- *Versus* -

1. Smt. Satyabhama Praharaj, aged about 34 years, W/o-  
Pradeep Ku.Praharaj, at- Baladhadi, Po-Nidhipur, P.S -  
Jankia, Dist - Khurda
2. Ananta Ch. Nayak, age- 46 years, S/o- Late Banshidhar Nayak, Resident  
of Jasuapur, PO- Satasankha, PS - Pipili, Dist - Puri,
3. Smt. Suchismita Das, aged about 34 years, W/o- Ashok Ku. Dah,  
Resident of Bhimatangi Housing Board Colony, Phase - II,  
L.B. 356, P.S- Airfield, Po- Old Town, Dist - Khurda.  
..... *Respondents.*

Counsel :

For the Appellant Shri D Mishra & Associates.

For the Respondent No.1. Sri R.C. Sarangi

For the Respondent No.2 Sri C.S. Behera

For the Respondent No.3 Sri D.K.Pattnaik

Date of argument : **08.09.2014**

Date of judgment : **22.09.2014.**

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

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This appeal has been preferred against an order dtd. 14/07/2014 passed by the learned Civil Judge ( Sr. Division), Bhubaneswar in I.A No. 72 of 2012, arising out of C. S. No. 68 of 2012. The parties in the lower court may be read as same in this appeal.

2. The factual matrix leading to the case of the petitioner ( Respondent No.1 ) is that the original suit schedule property is recorded in the name of Harapriya Pratihari, who sold the same under registered sale deed on 10.3.2010 to respondent No.1 to 3 and delivered the possession of the same. After purchasing the same on the same day the purchaser executed power of attorney in favour of the appellant/ Opp. No.1 to construct and develop apartments over the said property. It was agreed between them that the owners allocation would be 40 per cent out of total super built up area, out of which the Respondent No.1 is entitled to 1/3 interest, rest 60 percent of super built up area will be alienated by the power of attorney holder after the super structure is completed. The construction was started but owners allocation was not specified. When the entire construction has not been completed but all of a sudden the appellant in connivance with other respondents No.2 and 3 started to alienate the super built up area through registered sale deed by utilizing general power of attorney without identifying the 40 per cent of owners share. Hence, the respondent No.1 being petitioner filed the petition before the learned trial court to restrain the appellant and respondent No.2 and 3 from selling of any flats violating the general power of attorney.

3. The appellant and the respondent No.2 challenging the interim application submitted that the question of filing of suit and I.A are meaningless and he prayed to dismiss the I.A. Respondent No. 2 admitted the

conditions of General Power of Attorney but supported the plea taken by petitioner / respondent No.1 and alleged that he has also being cheated by appellant/ developer.

4. After hearing from both parties and considering the records learned trial court restrained the appellant/ respondent no.1 from entering into any agreement for sale of flats constructed over the suit land without any intending buyers or third party till disposal of the main suit.

5. Learned counsel for the appellant submitted that the impugned order passed by the learned trial court is illegal, wrong, erroneous, due to non-application of mind. The trial court has failed to appreciate that the plaintiff/ respondent No.1 has not been able to prove a prima facie case in her favour to obtain the order of injunction when the petitioner /respondent No.1 has withdrawn the power and there is no case for the petitioner/ respondent No.1. Learned trial court has erred in law to appreciate that the balance of convenience lies in faovur of the appellant / respondent No.1 as the appellant has incurred huge amount loan for construction of the house and if he is restrained to raise capital by selling the flats it will be prejudice to the interest of the appellant. The order of trial court is wrong and bad in law by not following the direction of the Hon'ble Court passed in WPC No. 2390/12. It is submitted by the learned counsel for the appellant that the injunction is barred by provision of the Specific Relief Act when there is no cause of action to file the suit. Learned trial court has transgressed it's power and without giving any reason passed interim order of injunction which reveals non application of mind. Learned trial court has failed to appreciate the materials on record and as such traversed much beyond the material and passed order of injunction on hypothesis, conjunctures and surmises. So, he prayed to set aside the order passed by the trial court.

6. Learned counsel for the respondent submitted that the trial court has rightly considered the general power of attorney and appellant a mere agent of Respondent No.1 to 3 can not transgress the right as assigned in general power of attorney. According to him the 40 percent super built area of each floor of the building after its completion will be identified for the owners but it was not permissible on the part of the appellant to alienate any portion to defraud the interest of respondent No.1 and 2. He further submitted that the order of learned trial court is proper, legal, valid and hygienic and appellate court can not interfere with the order of learned trial court if it has been properly exercised by the trial court. He supported the order of trial court and submitted to reject the appeal. Respondent No.2 also opposed all the grounds taken by the appellant and submitted that the order has been passed correctly and the contention of the learned counsel for the appellant is meaningless. So he submitted to reject the appeal filed by the appellant.

7. ***It is reported in Purshottam Vishandas Raheja and another appellant V. Shrichand Vishandas Raheja and others .... Respondents reported in (2011) 6 Supreme Court Cases 73, where their lordship observed at para-31.***

*“In such appeals, 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 or interlocutory injunctions. An appeal against exercise of discretion is said to be an appeal on principle. The appellate court will not reassess the material and seek*

*to reach a conclusion different from the one reached by the court below if the one reached by that court was reasonably possible on the material. The appellate court would normally not be justified in interfering with the exercise of discretion under appeal solely on the ground that if it had considered the matter at the trial stage it would have come to a contrary conclusion. If the discretion has been exercised by the trial court reasonably and in a judicial manner the fact that the appellate court would have taken a different view may not justify interference with the trial court's exercise of discretion".*

With due respect to the decision of the Hon'ble Apex Court, I find in the interlocutory matter the appellate court will not reassess the material and seek to reach a conclusion different from the one reached by the court below if the one reached by that court was reasonably possible on the material. The order 39, Rule 1 & 2 C.P.C can only be considered if the petitioner has got a prima facie case, balance of convenience and irreparable injury or loss in the event of refusal of injunction. In the present case the alienation of suit land in favour of respondents by Satyabhama Praharaj is undisputed. It is also undisputed about the execution of general power of attorney in favour of appellant by the respondents. Learned trial court has gone through the relevant clauses of the general power of attorney. It is needless to repeat the description of clauses. However on going through it appears that the principal, share will be 40 per cent of super built area and the balance 60 percent with the attorney holder who will develop and construct the flats on behalf of the purchaser and principal will have no claim whatsoever on the 60 per cent of land and over it's construction. It is also available from the power of attorney that the appellant shall execute registered deed of conveyance of the land proportionately to

60 percent of the built up area and to receive consideration. It is further agreed by the parties that the power of attorney holder will not alienate, transfer or negotiate the principal super built area without consent of the land owner. There is nothing mentioned in the general power of attorney that the power of attorney holder will negotiate for sell of the flats and accept the consideration amount without determining the 40 per cent share of the owners on the built up area. There is no document produced by the appellant to show that he has taken step to demarcate the built up area by approving plan of the BDA. It is true that the respondent No.1 has to prove the prima facie case, the general power of attorney is a document of both the parties and all are bound by the document of general power of attorney. Learned counsel for the parties submitted that unless the flats are purported for sell that can not be raising of funds by the appellant. Thus there appears the appellant is going slowly to circumvent the terms and conditions of the general power of attorney. So, there is a prima facie case proved by the respondent No.1 / petitioner without identifying the 40 per cent of the built up area of every floor even by approved plan, it is not possible to sell the 60 per cent of the built up area and the flats therein by the appellant. So, balance of convenience lies in favour of the respondent No.1. If the flats are sold without consultation by the intervening the terms and conditions of general power of attorney, the irreparable loss will occur to the owners i.e. respondent. So, discretion used by the learned court below appears to be correct. On the other hand, the appellant can not enter into agreement for sale over the suit land with any intending buyers or entering into transfer of flat to third party but he should first identify the built up area according to the terms and conditions of the general power of attorney and then with the consent of the principals who are respondents enter into agreement to sell in

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respect of the 60 per cent of his built up area over suit land with any intending buyers. Accordingly, it is ordered.

**O R D E R**

The appeal is partly allowed with the modification that the appellant is restrained from selling or from entering into any agreement for sell with any intending buyers for the suit land or any flat on the suit land without identifying 40 per cent of built up area of Respondents after the plan duly approved by B.D.A.

District Judge, Khurda  
at Bhubaneswar  
**22.09.2014.**

Dictated and corrected by me and pronounced in the open Court this day the  
**22<sup>nd</sup> day of September, 2019.**

**District Judge, Khurda  
at Bhubaneswar  
22.09.2014.**

IN THE COURT OF THE DISTRICT JUDGE, KHURDA  
**AT BHUBANESWAR.**

Present:

Shri D. Dash,  
District Judge, Khurda  
at Bhubaneswar.

Dated, Bhubaneswar the 18<sup>th</sup> day of May, 2013.

F.A.O.19 of 2013

[ Arising out of the order, dated 20.01.2013 passed by the  
learned Civil Judge ( Jr. Division), Bhubaneswar in I.A.  
No.520 of 2012, arising out of C.S. No. 506 of 2012]

Mandakini Behera, aged about 56 years, W/o- Sri Rajkishore  
Behera, Plot No. 321, 3<sup>rd</sup> floor, District Centre,  
Chandrasekharapur, P.S - Chandrasekharapur, Bhubaneswar-  
751016, District - Khurda.

..... *Appellant.*

- *Versus* -

Soumya Ranjan Dalai, age- 27 years, S/o- Sri Bairagi Ch.  
Dalai, Resident of VIM -112, Sailashree Vihar, P.S -  
Chandrasekharapur, Bhubaneswar, -751021, Dist -Khurda, At  
present Proprietor of “ Beehive Studios”, Plot No. 321, 2<sup>nd</sup>  
floor, District Centre, Chandrasekharapur, P . S-  
Chandrasekharapur, Bhubaneswar, 751016.

..... *Respondent.*

Counsel :

For the Appellant                      Shri B. B Mishra & Associates.  
For the Respondent                      Md. Alam & Associates.

Date of argument                      :                      17.05.2013  
Date of judgment                      :                      18.05.2013.

J U D G M E N T

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This appeal has been directed against an order dtd. 22.01.2013 passed by the learned Civil Judge ( Jr. Division), Bhubaneswar in I.A No. 552 of 2012, arising out of C. S. No. 520 of 2012 in the matter of a petition under order 39, Rule 1 & 2 read with Sec. 151, C.P.C.

2. The appellant as the petitioner in the Court below filed a petition under order 39, Rule-1 & 2, C.P.C read with section 151, C.P.C with a prayer in the interim for a direction to the respondent to deposit the monthly rent of Rs.84,000/- by the 05<sup>th</sup> day of every month and for payment of electricity and water charges as per consumption in respect of tenanted premises. The appellant claimed that since the respondent who is admittedly the tenant under her is not paying the monthly rent of Rs.84,000/- with increase of the same at the rate of 5 % on completion of every two years and is continuing in possession, such a direction is the need. The respondent on appearance therein pressed that the proceeding be dropped on the basis of order dtd. 19.12.2012 in I.A. No. 520 of 2012. It is stated that since there is a settlement between the parties for payment of monthly rent of Rs.75,000/- till disposal of the suit no such further direction is called for.

3. The Court below taking into account its order dtd. 19.12.2012 wherein respondent has been directed to pay monthly rent of Rs. 75,000/- along with water and electricity charges within the 07<sup>th</sup> day of each English Calender month, passed the following order :-

“ The O.P is hereby directed to pay monthly rent of Rs.75,000/- along with water and electricity charges on each English calender month. The O.P is to see that there will not be any

situation of any dishonor of deposited cheques on any ground. After deposit of the cheques or drafts the petitioner will receive the same from the Court as sufficient compliance of the order of this Court”

In this appeal, the sole ground raised for interference is that the court below ought to have directed payment of monthly rent of Rs.84,000/- from the date of filing of the suit i.e. September, 2012 and the arrears as well as to pay the electricity charges regularly as per the consumption.

4. The relationship between the parties as land lady and tenant stands admitted and so also the fact that the respondent is continuing to occupy the tenanted premises. The appellant alleges that the respondent is not paying the monthly house rent, electricity and water charges.

5. It appears that on 19.12.2012, the Court below has passed an order directing the respondent to pay a monthly rent of Rs.75,000/-. It may be stated that there was a dispute with regard to the quantum of monthly rent. But the parties for the time being have amicably agreed subject to result of the suit, that monthly rent of Rs.75,000/- would be paid by the respondent to the appellant. It is stated that despite such direction the respondent is not paying monthly rent of Rs.75,000/- along with water charges and electricity charges within the 7<sup>th</sup> day of each English Calendar month. The appellant when claims to have not been receiving the same from the respondent; the respondent asserts to have been regularly paying as per that order dtd. 19.12.2012 in I.A. No. 520 of 2012. Therefore, the Court below has directed that the same be deposited in Court so as to be ultimately paid to the appellant. This course has been adopted by the Court to avoid allegation and counter allegation giving rise to multiplicity of proceedings. At this stage, the court below in my considered view has rightly not gone to decide the quantum of the monthly rent more than what has been agreed to

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as per settlement. In fact that was also not within the the scope of the proceeding. At this interim stage as regards the arrears also the Court having not gone beyond what has been in the order dated 19.12.2012 is no ground for interference as no fault can be found with it. Any order on these claims will amount to prejudging the controversial facts and the Court at the earlier stage refrain from going ahead.

6. In the facts and circumstances, I do not find any such illegality in the impugned order calling for interference.

In the result, the appeal stands dismissed without any cost.

District Judge, Khurda  
at Bhubaneswar  
18.05.2013.

Dictated and corrected by me and pronounced in the open Court this day the **18<sup>th</sup> day of May, 2013.**

**District Judge, Khurda  
at Bhubaneswar  
18.05.2013.**

IN THE COURT OF THE DISTRICT JUDGE, KHURDA  
**AT BHUBANESWAR.**

Present:-

Shri D. Dash,  
District Judge, Khurda  
at Bhubaneswar.

Dated, Bhubaneswar the 18<sup>th</sup> day of May, 2013.

F.A.O.20 of 2013

[ Arising out of the order, dated 22.01.2013 passed by the

learned Civil Judge ( Jr. Division), Bhubaneswar in I.A. No.520 of 2012, arising out of C.S. No. 506 of 2012]

Mandakini Behera, aged about 56 years, W/o- Sri Raj Kishore Behera, Plot No. 321, 3<sup>rd</sup> floor, District Centre, Chandrasekharpur, P.S - Chandrasekharpur, Bhubaneswar- 751016, District - Khurda.

..... *Appellant.*

- *Versus* -

Soumya Ranjan Dalai, age- 27 years, S/o- Sri Bairagi Ch. Dalai, Resident of VIM -112, Sailashree Vihar, P.S - Chandrasekharpur, Bhubaneswar, -751021, Dist -Khurda, At present Proprietor of “ Beehive Studios”, Plot No. 321, 2<sup>nd</sup> floor, District Centre, Chandrasekharpur, P . S- Chandrasekharpur, Bhubaneswar, 751016.

..... *Respondent.*

Counsel :

For the Appellant                      Shri B. B. Mishra & Associates.  
For the Respondent                      Md. Alam & Associates.

Date of argument                      :                      17.05.2013  
Date of judgment                      :                      18.05.2013.

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

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This appeal has been directed against an order dtd. 22.01.2013 passed by the learned Civil Judge ( Jr. Division), Bhubaneswar in I.A No. 552 of 2012, arising out of C. S. No. 520 of 2012 in the matter of a petition under order -39, Rule - 1 & 2 read with Sec. 151, C.P.C.

2.                      The appellant as the petitioner in the Court below has filed this appeal challenging the order passed by the Civil Judge (Jr. Division), Bhubaneswar in the matter of a petition under order - 39, Rule- 1 & 2 read with section 151, C.P.C for temporary injunction against the respondent

restraining her from evicting the respondent from the tenanted premises in any manner and also for protection against the disconnection of power and water supply. Admittedly, the relationship between the parties that the appellant is the land lady of the respondent is admitted. It is the case of the appellant that the respondent had been paying monthly rent of Rs.84,000/- but it is said that there has been reduction of the same to Rs.75,000/- per month with the intervention of the local gentries and which the respondent has been paying regularly by way of issuing cheques. It is also stated by the respondent that he has been paying electricity and water charges to the appellant as per actual consumption. It is further stated that the respondent have spent huge sum has well furnished the tenanted premises and said amount is yet to be settled between them. During the process for settlement of the amount, the appellant is said to have been made demand to deliver the vacant possession of the tenanted premises by 20.09.2012 prior to the expiry of the agreement period of five years with further threat of disconnection of water and electricity supply and forcible eviction. This has necessiated the respondent to file suit for permanent injunction as stated above.

3           The respondent while denying the allegation of giving threat of forcibly eviction and for disconnection of electricity and water supply etc has stated that the monthly rent is Rs.84,000/- and that has never be revised to Rs.75,000/-. It is stated that respondent is a defaulter from the beginning in making payment of house rent, electricity & water charges. The fact regarding the respondent having borne the expenses by spreading tile on floor etc are denied.

4           The Court below considering the rival pleadings and taking into account, the admitted factual position has temporarily restrained the appellant from evicting the respondent from tenanted premises till disposal of

the C.S No. 506 of 2012 pending in that Court or til the time the respondent is lawfully evicted from the suit land which is earlier. It is further been order that this order of restrain would remain operative only on payment of monthly house rent of Rs.75,000/- together with electricity and water charges as per the actual consumption by the respondent to the appellant on the 07<sup>th</sup> day of each English Calender month.

5 Admittedly, the respondent is continuing to occupy the tenanted premises.

Now the grievance before this Court in appeal by the land lady appellant is for modification of the impugned with a direction for payment of monthly rent of Rs.84,000/- with effect from the date of filing of the suit i.e. September, 2012 and also for a direction to the respondent to pay the arrears by further imposing condition regarding payment of electricity and water charges. Taking into account the settlement between the parties for the time being agreeing for payment of monthly rent of Rs.75,000/- as has been reflected in the order of the Court below passed on 19.12.2012, the Court below appears to have rightly accepted that for the present in stead of going to take up issue for decision in the matter of quantum of monthly rent which is also not permissible at this stage and in view of the settled position of law that the court should refrain it from going to take up the issue involved in the main suit for decision as that would amount to prejudging the issue at a premature stage.

6. In the facts and circumstances, I do not find that the appellant has made out any case for the modification of the impugned order.

In the result, the appeal stands dismissed without any cost.

District Judge, Khurda

-:15:-

at Bhubaneswar

18.05.2013.

Dictated and corrected by me and pronounced in the open Court this day the  
**18<sup>th</sup> day of May, 2013.**

**District Judge, Khurda**

**at Bhubaneswar**

IN THE COURT OF THE DISTRICT JUDGE, KHURDA  
AT BHUBANESWAR.

Present:

Shri D. Dash,  
District Judge, Khurda  
at Bhubaneswar.

Dated, Bhubaneswar the 18<sup>th</sup> day of May, 2013.

F.A.O.19 of 2013

[ Arising out of the order, dated 20.01.2013 passed by the  
learned Civil Judge ( Jr. Division), Bhubaneswar in I.A.  
No.520 of 2012, arising out of C.S. No. 506 of 2012]

Mandakini Behera, aged about 56 years, W/o- Sri Rajkishore  
Behera, Plot No. 321, 3<sup>rd</sup> floor, District Centre,  
Chandrasekharapur, P.S - Chandrasekharapur, Bhubaneswar-  
751016, District - Khurda.

..... Appellant.

- Versus -

Soumya Ranjan Dalai, age- 27 years, S/o- Sri Bairagi Ch.  
Dalai, Resident of VIM -112, Sailashree Vihar, P.S -  
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floor, District Centre, Chandrasekharpur, P . S-  
Chandrasekharpur, Bhubaneswar, 751016.

..... Respondent.

Counsel :

For the Appellant                      Shri B. B Mishra & Associates.  
For the Respondent                      Md. Alam & Associates.

Date of argument                      :                      17.05.2013  
Date of judgment                      :                      18.05.2013.

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

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2.                      The appellant as the petitioner in the Court below filed a petition under order 39, Rule-1 & 2, C.P.C read with section 151, C.P.C with a prayer in the interim for a direction to the respondent to deposit the monthly rent of Rs.84,000/- by the 05<sup>th</sup> day of every month and for payment of electricity and water charges as per consumption in respect of tenanted premises. The appellant claimed that since the respondent who is admittedly the tenant under her is not paying the monthly rent of Rs.84,000/- with increase of the same at the rate of 5 % on completion of every two years and is continuing in possession, such a direction is the need. The respondent on appearance therein pressed that the proceeding be dropped on the basis of order dtd. 19.12.2012 in I.A. No. 520 of 2012. It is stated that since there is a settlement between the parties for payment of monthly rent of Rs.75,000/- till disposal of the suit no such further direction is called for.

3.                      The Court below taking into account its order dtd. 19.12.2012

wherein respondent has been directed to pay monthly rent of Rs. 75,000/- along with water and electricity charges within the 07<sup>th</sup> day of each English Calender month, passed the following order :-

“ The O.P is hereby directed to pay monthly rent of Rs.75,000/- along with water and electricity charges on each English calender month. The O.P is to see that there will not be any situation of any dishonor of deposited cheques on any ground. After deposit of the cheques or drafts the petitioner will receive the same from the Court as sufficient compliance of the order of this Court”

In this appeal, the sole ground raised for interference is that the court below ought to have directed payment of monthly rent of Rs.84,000/- from the date of filing of the suit i.e. September, 2012 and the arrears as well as to pay the electricity charges regularly as per the consumption.

4. The relationship between the parties as land lady and tenant stands admitted and so also the fact that the respondent is continuing to occupy the tenanted premises. The appellant alleges that the respondent is not paying the monthly house rent, electricity and water charges.

5. It appears that on 19.12.2012, the Court below has passed an order directing the respondent to pay a monthly rent of Rs.75,000/-. It may be stated that there was a dispute with regard to the quantum of monthly rent. But the parties for the time being have amicably agreed subject to result of the suit, that monthly rent of Rs.75,000/- would be paid by the respondent to the appellant. It is stated that despite such direction the respondent is not paying monthly rent of Rs.75,000/- along with water charges and electricity charges within the 7<sup>th</sup> day of each English Calender month. The appellant when claims to have not been receiving the same from the respondent; the respondent asserts to have been regularly paying as per

that order dtd. 19.12.2012 in I.A. No. 520 of 2012. Therefore, the Court below has directed that the same be deposited in Court so as to be ultimately paid to the appellant. This course has been adopted by the Court to avoid allegation and counter allegation giving rise to multiplicity of proceedings. At this stage, the court below in my considered view has rightly not gone to decide the quantum of the monthly rent more than what has been agreed to as per settlement. In fact that was also not within the the scope of the proceeding. At this interim stage as regards the arrears also the Court having not gone beyond what has been in the order dated 19.12.2012 is no ground for interference as no fault can be found with it. Any order on these claims will amount to prejudging the controversial facts and the Court at the earlier stage refrain from going ahead.

6. In the facts and circumstances, I do not find any such illegality in the impugned order calling for interference.

In the result, the appeal stands dismissed without any cost.

District Judge, Khurda  
at Bhubaneswar  
18.05.2013.

Dictated and corrected by me and pronounced in the open Court this day the **18<sup>th</sup> day of May, 2013.**

**District Judge, Khurda  
at Bhubaneswar  
18.05.2013.**

IN THE COURT OF THE DISTRICT JUDGE, KHURDA  
**AT BHUBANESWAR.**

Present:

Shri D. Dash,  
District Judge, Khurda  
at Bhubaneswar.

Dated, Bhubaneswar the 13<sup>th</sup> day of May, 2013.

*F.A.O.20 of 2013*

[ Arising out of the order, dated 22.01.2013 passed by the learned Civil Judge ( Jr. Division), Bhubaneswar in I.A. No.520 of 2012, arising out of C.S. No. 506 of 2012]

Mandakini Behera, aged about 56 years, W/o- Sri Raj Kishore Behera, Plot No. 321, 3<sup>rd</sup> floor, District Centre, Chandrasekharapur, P.S - Chandrasekharapur, Bhubaneswar- 751016, District - Khurda.

..... *Appellant.*

- *Versus* -

Soumya Ranjan Dalai, age- 27 years, S/o- Sri Bairagi Ch. Dalai, Resident of VIM -112, Sailashree Vihar, P.S - Chandrasekharapur, Bhubaneswar, -751021, Dist -Khurda, At present Proprietor of “ Beehive Studios”, Plot No. 321, 2<sup>nd</sup> floor, District Centre, Chandrasekharapur, P . S- Chandrasekharapur, Bhubaneswar, 751016.

..... *Respondent.*

Counsel :

For the Appellant                      Shri B. B. Mishra & assts.  
For the Respondent                      Md. Alam & assts.

Date of argument                      :                      15.04.2013  
Date of judgment                      :                      13.05.2013.

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

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This appeal has been directed against an order dtd. 22.01.2013 passed by the learned Civil Judge ( Jr. Division), Bhubaneswar in I.A No. 552 of 2012, arising out of C. S. No. 520 of 2012 in the matter of a petition under order -39, Rule - 3 C.P.C read with Sec. 151, C.P.C.

2.                      The appellant as the petitioner in the Court below has filed this appeal challenging the order passed by the Civil Judge (Jr. Division), Bhubaneswar in the matter of a petition under order - 39, Rule-3 read with section 151, C.P.C for temporary injunction against the respondent restraining her from evicting the respondent from the tenanted premises in any

manner and also for protection against the disconnection of power and water supply. Admittedly, the relationship between the parties that the appellant is the land lady of the respondent is admitted. It is the case of the appellant that the respondent has been paying monthly rent of Rs.84,000/- but it is said that there has been revision of Rs.75,000/- per month with the intervention of the local gentries and which the respondent has been paying regularly by way of issuing cheques. It is also stated by the respondent that he has been paying electricity and water charges to the appellant as per his consumption. It is further stated that the respondent having spent huge sum has well furnished the tenanted premises. The amount is yet to be set between them. During the progress for settling the amount, the appellant is said to have been made demand to deliver the vacant possession of the tenanted premises by 20.09.2012 prior to the expiry of the agreement period of five years with further threat of disconnection of water and electricity supply and forcible eviction that necessitate the respondent to file suit for permanent injunction as stated above.

3           The respondent while taking the allegation of giving threat of forcibly eviction and for disconnection of electricity and water supply etc has stated that the monthly rent is Rs.84,000/- and that has never be revised to Rs.75,000/-. It is stated that respondent is a defaulted from the beginning in making payment of house rent, electricity & water charges. The fact regarding the respondent having borne the expenses by spending tile flooring etc is denied.

4           The Court below considering the rival pleadings and taking into account, the appellant temporarily restrained from evicting the respondent from tenanted premises till disposal of the C.S No. 506 of 2012 pending in that Court or til the time the respondent is lawfully evicted from the suit land

which is earlier. It is further been order that this order of restrain would be effective only on payment of monthly house rent of Rs.75,000/- by the respondent to the appellant on the 07<sup>th</sup> day of each English Calender month with electricity and water charges as per the actual consumption.

5 Admittedly, the respondent is continuing to occupy the tenanted premises as a tenant under the land lady, the appellant.

6. Now the complaint before this Court in appeal by the land lady appellant is for modification of the impugned with a direction for payment of monthly rent of Rs.84,000/- with effect from the date of filing of the suit i.e. September, 2012 and also for a direction to make the respondent to pay the arrears by further imposing condition regarding payment of electricity and water charges. Taking into account the settlement between the parties agreeing for payment of monthly rent of Rs.75,000/- as has been reflected in the order of the Court below passed on 19.12.2012, the Court below has rightly accepted that for the time being in stead of going to take up issue of decision in the matter of quantum of monthly rent which is also not permissible at this stage also as regards when it is the settled position of law as last ground or refusing temporary injunction the court should refrain it from going to take up the issue involved in the main suit for decision as that amounting prejudice the issue at a prematured stage.

In the facts and circumstances, I do not find that the appellant has made out any case in the modification of the impugned order.

In the result, the appeal stands dismissed without any cost.

District Judge, Khurda

at Bhubaneswar

13.05.2013.

Dictated and corrected by me and pronounced in the open Court this day the **13<sup>th</sup> day of May, 2013.**

**District Judge, Khurda  
at Bhubaneswar**

IN THE COURT OF THE DISTRICT JUDGE, KHURDA  
**AT BHUBANESWAR.**

Present:

Shri D. Dash,  
District Judge, Khurda  
at Bhubaneswar.

Dated, Bhubaneswar the 13<sup>th</sup> day of May, 2013.

*F.A.O.19 of 2013*

[ Arising out of the order, dated 20.01.2013 passed by the  
learned Civil Judge ( Jr. Division), Bhubaneswar in I.A.  
No.520 of 2012, arising out of C.S. No. 506 of 2012]

Mandakini Behera, aged about 56 years, W/o- Sri Rajkishore  
Behera, Plot No. 321, 3<sup>rd</sup> floor, District Centre,  
Chandrasekharapur, P.S - Chandrasekharapur, Bhubaneswar-  
751016, District - Khurda.

..... *Appellant.*

- *Versus* -

Soumya Ranjan Dalai, age- 27 years, S/o- Sri Bairagi Ch.  
Dalai, Resident of VIM -112, Sailashree Vihar, P.S -  
Chandrasekharapur, Bhubaneswar, -751021, Dist -Khurda, At  
present Proprietor of “Beehive Studios”, Plot No. 321,  
2<sup>nd</sup> floor, District Centre, Chandrasekharapur, P . S-  
Chandrasekharapur, Bhubaneswar, 751016.

..... *Respondent.*

Counsel :

For the Appellant Shri B. B Mishra & assts.

For the Respondent Md. Alam & assts.

Date of argument : 15.04.2013

Date of judgment : 13.05.2013.

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

This appeal has been directed against an order dtd. 22.01.2013 passed by the learned Civil Judge ( Jr. Division), Bhubaneswar in I.A No. 552 of 2012, arising out of C. S. No. 520 of 2012 in the matter of a petition under order 39, Rule 3 C.P.C read with Sec. 151, C.P.C.

2. The appellant as the petitioner in the Court below filed a petition under order 39, Rule-3, C.P.C read with section 151, C.P.C with a prayer in the interim for a direction to the respondent to deposit the monthly rent of Rs.84,000/- by the 05<sup>th</sup> day of every month and for payment of electricity and water charges as per consumption in respect of tenanted premises. The appellant claimed that since the respondent who is admittedly the tenant under her is not paying the monthly rent of Rs.84,000/- with increase of the same at the rate of 5 % on completion of every two years and is continuing in possession, such a direction is the need. The respondent in appearance therein pressed that the proceeding be dropped on the basis of an order dtd. 19.12.2012 in I.A. No. 520 of 2012. It is stated that since there is a settlement between the parties for payment of monthly rent of Rs.75,000/- till disposal of the suit no such further direction is called for.

3. The Court below taking into account its order dtd. 19.12.2012 wherein respondent has been directed to pay monthly rent of Rs. 75,000/- along with water and electricity charges within the 07<sup>th</sup> day of each English Calender month, passed the order in the same which runs as under:-

“ The O.P is hereby directed to pay monthly rent of Rs.75,000/- along with water and electricity charges on each English calender month. The O.P is to see that there will not be any situation of any dishonor of deposited cheques on any ground.

After deposit of the cheques or drafts the petitioner will receive

the same from the Court as sufficient compliance of the order of this Court”

In this appeal, the sole ground raised for interference is that the court below ought to have directed payment of monthly rent of Rs.84,000/- from the date of filing of the suit i.e. September, 2012 and the arrears as well as to pay the electricity charges regularly as per the consumption.

4. The relation between the parties as land lady and tenant stands admitted and so also the fact that the respondent is continuing to occupy the tenanted premises. The appellant asserts that the respondent is not paying the monthly house rent, electricity and water charges.

5. It appears that on 19.12.2012, the Court below has passed an order directing the respondent to pay a monthly rent of Rs.75,000/-. It may be stated that there was a dispute with regard to the quantum of monthly rent. But the parties for the time being have amicably agreed subject to result of the suit, monthly rent of Rs.75,000/- be paid by the respondent to the appellant. It is stated that despite such direction the respondent is not paying monthly rent of Rs.75,000/- along with water charges and electricity charges within the 7<sup>th</sup> day of each English Calendar month. The appellant when claims to have not been receiving the same from the respondent; the respondent assert to have been regularly paying as per that order dtd. 19.12.2012 in I.A. No. 520 of 2012. Therefore, the Court below has directed that the same be deposited in Court so as to ultimately be paid to the appellant. Then course has been adopted by the Court to avoid allegation and counter allegation causing rise to multiplicity of proceedings. At this stage, the court below has rightly not gone to decide the quantum of the monthly rent more than what has been admitted. In fact that was not within the jurisdiction of the Court. At this interim stage as regards the arrears also the Court has not gone beyond what

has been in the order dated 19.12.2012.

6. In the facts and circumstances, I do not find any such illegality in the impugned order for interference.

In the result, the appeal stands dismissed without any cost.

District Judge, Khurda

at Bhubaneswar

13.05.2013.

Dictated and corrected by me and pronounced in the open Court this day the **13<sup>th</sup> day of May, 2013.**

**District Judge, Khurda**

**at Bhubaneswar**

**13.05.2013.**

IN THE COURT OF THE DISTRICT JUDGE, KHURDA  
AT BHUBANESWAR.

Present:

Shri D. Dash,  
District Judge, Khurda  
at Bhubaneswar.

Dated, Bhubaneswar the 22<sup>ND</sup> day of April, 2013.

F.A.O.124 of 2012

[ Arising out of the order, dated 27.08.2012 passed by the learned Civil Judge ( Jr. Division), Bhubaneswar in I.A. No.283 of 2012, arising out of C.S. No. 263 of 2012]

Institute Management & Advance Global Excellence (IMAGE)  
Trust, Represented through its Director-cum-Managing

Trustee, Sri Sushanta Kumar Sahoo, aged about 40 years, S/o- Late Satyananda Sahoo, having its registered office, At- 912/913, GGP Colony, Rasulgarh, Bhubaneswar, P.S- Mancheswar, Dist - Khurda.

..... Appellant.

Versus-

Sri Somanath Naik, aged about - 68 years, S/o- Late Brajendranath Naik, Resident of Darghabzar, P.S - Darghabazar, Town/Dist - Khurda.

..... Respondent.

Counsel :

For the Appellant                      Shri G.K. Mohanty & assts.

For the Respondent                      Shri Ranjit Kumar Choudhury & assts.

Date of argument                      :            25.03.2013  
Date of judgment                        :            22.04.2013.

JUDGEMENT

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The unsuccessful petitioner in the Court of Civil Judge ( Jr. Division), Bhubaneswar in I.A. No. 283/2012, arising out of C.S. No. 263 of 2012 in the matter of a petition under order No.39, Rule 1 & 2 read with 151 C.P.C which has been dismissed has preferred this appeal.

2.                      Challenging the same appellant as plaintiff has filed the suit for the relief of permanent injunction restraining the respondent from evicting the plaintiff illegally and forcibly either himself or through others without taking course to law. In that suit prayer for temporary injunction has been made for protecting such possession of the appellant as dispossession is apprehended.

The case of the appellant is that the plaintiff trust registered under the Trust Act having the activity in the technical education has taken the commercial complex of the respondent on lease on monthly rent basis. The lease deed to that effect was executed on 1.5.2006. Simultaneously, there was also an agreement between the parties for the purpose of service and maintenance of the premises. It is the agreement that the lessee should pay a sum of Rs.24,000/- per month to utilise the same as per the said service and maintenance agreement. It is also claimed that the plaintiff invested huge funds to make the complex habitable and also for modification and other alteration to shoot the purpose. This act of the plaintiff was permitted under the deed of lease. The plaintiff on expiry of the period of lease although several times requested for renewal, ultimately, the respondent avoided. This state of affair is now continue and the appellant apprehending forcible dispossession from the said complex has filed the suit for permanent injunction with prayer that the respondent be enjoined from illegal dispossession the plaintiff without taking recourse of law and he should be refrained from to take law into his own hands.

The respondent in his objection stated that the appellant is in huge arrears of monthly rents and it come to 13,62,000/- as on 30.06.2012 which the appellant is not paying in spite of several requests. It is admitted by the respondent that there was a lease and now the period of lease has expired. It is also stated by the respondent a notice U/s. 106, T.P. Act has been served upon the appellant terminating the tenancy but thereafter the respondent is continuing with occupation of the said complex. It is said that the very purpose of the finding of the suit is to enjoy the property without making payment and to drag on the litigation as long as possible.

3. The Court below having taken into note of the fact that the

period of lease as expired has come to a conclusion that the occupation of the appellant is that of a trespasser. As am not in a position to understand the meaning that the court below want to convey I feel it proper to quote the same as under:-

“ as the period of agreement has already been expired since 30.04.2012, the petitioner occupying the suit premises after 30.04.2009 is a trespasser only which should be restrained”

There is no dispute in this case as regards appellant entering into the premises as a monthly tenant w. e. f. 1.5.2006. There was a deed of house rent agreement between the parties and the monthly rent fixed therein is Rs. 56,000/- per month for the period i.e. first three years and thereafter with an increase of 15 per cent thereof. The service and maintenance agreement between the parties is on 1.5.2006 also stands admitted. The appellant was to pay a sum of Rs.24,000/- to the respondent per month with a increase of 15 per cent after the period of first three years. The period of original lease as expired there has no renewal. On the other hand there has a notice of termination of tenancy.

This appeal has been directed against an order dtd. 20.12.2010 passed by the learned Civil Judge ( Jr. Division), Bhubaneswar in I.A No. 398 of 2010, arising out of C. S. No. 324 of 2010 in the matter of a petition under order 39 Rule 3 C.P.C read with Sec. 151, C.P.C. By the said order learned Civil Judge, Jr. Division, Bhubaneswar has dismissed the petition for issuance of temporary injunction restraining the respondents and others from selling and interfering of the peaceful possession of the appellant in respect of the suit land. The appellant as plaintiff has filed the suit for permanent injunction

against the respondents to restrain them from interfering with his peaceful possession and from selling the suit land.

2. Appellant's case is that the suit land is his exclusive property and it stands recorded in his name and he is in possession of the same. He has availed a cash credit loan from respondent No.1 by mortgaging the said land in favour of defendant No.1. It is stated that a two storied building stands over the suit land. Further the case of the appellant is that after availing the loan he mortgaged his LIC bonds in favour of the respondent No.1. Thereafter, he went on repaying the loan amount by way of installments. On 04.02.2010 a notice is issued by the respondent No.1 to the plaintiff to deposit a sum of Rs.55,000/- and on 04.02.2010 and 06.03.2010 the appellant claims to have paid a sum of Rs.10,000/- on 22.03.2010 again a sum of Rs.67,537/-. It is also stated that a sum of Rs.33,732 has also been received by Respondent No.2 against LIC policy of the appellant. The plaintiff asserts that he has no intention to cheat the respondents and his desire to clear up the bank dues but the situation has happened because of financial crunch. On 07.05.2010 the respondent No.1 issued notice for possession U/s.8(1) of the securitization Act 2002 and notice of sell of property is said to have been issued on 27.5.2010 which the appellant came to know on 09.06.2010. The appellant avers that he has no objection if the auction is conducted over the property as stated in sale notice dtd. 27.05.2010. While further stating that he has not received the notice as provided under Rule 85 and 9(1) of the Security interest (Enforcements) Rules, 2002 stating the auction to be illegal and violation of principle of natural justice. The appellant has approached the Civil Court saying to have a prima facie case and that in the event of sell of the suit land he would suffer loss, irreparable injury which can not be compensated.

The respondents in their objection raising the maintainability categorically mentioned the suit to be not maintainable as per Sec. 34 of the Act. On the factual aspect it has been stated that the appellant has taken a loan of Rs.9,55,293/- as on 06.03.2010 and did not pay the installment amounts for which, on 6.3.2010 notice was issued U/s.13(2) of the Act calling upon the appellant to pay a loan amount and to discharge his liability within a period of 60 days and in spite of receiving the notice there was no payment so notice for sale of the mortgage property was published in the Odiya daily "SAMAYA" and English daily New Indian Express. It is further stated that initially there was a typographical error with regard to the plot number of the mortgaged property in respect of the plot number being written as 2155/2582 which was written 2155/2852. This when came to their notice the same was rectified by way of another paper publication on 18.06.2010 and those Odiya and English daily. This fact is said to have been communicated by the appellant. In view of these, the respondents case is that the appellant is not entitled to the temporary injunction.

3. The Court below after hearing of the parties and going through the pleadings as well as the documents available has finally refused to pass an order of temporary injunction. It is this order which has been impugned in this appeal. The learned counsel for the appellants submit that the Court below has erred in both law and fact in not granting the temporary injunction when the prima facie case has been established by the appellant in saying that the there has been infraction of the provision and rules.

Learned counsel for the respondents on the other hand supports the order of the court below in saying that in such a matter the court below has rightly refused to pas the temporary injunction and the same is in accordance with the law and the position of law is settled by the Hon'ble Apex

Court in case of United Bank of India Vrs. Satyawati Tondon and others.

4. Admittedly, the appellant is a lonee under the respondents and had mortgaged the suit schedule property now the only dispute i. e. raised is with regard to non-compliance of statutory provision under Rule - 85 and Rule 91 of the Rules of 2002. The appellant does not deny that the respondents have issued a notice to him indicating therein of course a wrong plot number as the mortgaged property. So, also the same has been published in the news paper while for the purpose of sell. The respondents submit that there has been full compliance of the provision of Rule 85 and 92 of the Rules of 2002. It is their case that initially there was a typographical error with regard to the plot number in the sell notice, which has been subsequently rectified. The case falls within the act of 2002. Section 34 of the Act says that any dispute between the parties in respect of the recovery of loan amount shall be adjudicated by the D.R.T and not by the Civil Court. So hear the dispute relate to the following of procedure for attachment of the mortgaged property. When it is said by the appellant that there was non-compliance of the statutory rules, the respondents denied the same. The appellant appears to have suppressed the paper publication rectifying the mistake in the plot number as indicated in the earlier publications. The document goes to show that the appellant has also been informed by letter dtd. 18.06.2010. In such a state of affair the Court below appears to have been rightly found the appellant no prima facie case or arguable case as has been made by the appellant for the purpose of grant of temporary injunction. The balance of convenience under the circumstances can never leaning in favour of the appellant as the injunction prayed for would be stalling the process of legal action sought to be enforced by the respondent. In case of United Bank of India ( Supra ) it has been clearly held that injuncting the bank from taking

action noticed U/s.13(4) of the Act is impermissible. Thus, the appellant can also said to be suffering from irreparable loss or injury in case further action proceeds in accordance with the provision of the Act and Rules. For the aforesaid discussion, I find no wrong in the order of the Court below in refusing the prayer for ad interim injunction made by the appellant and the same is hereby confirmed.

Resultantly, the appellant fails and in case without any cost.

District Judge, Khurda  
at Bhubaneswar  
09.04.2013.

Dictated and corrected by me and pronounced in the open Court this day the 9<sup>th</sup> day of April, 2013.

District Judge, Khurda  
at Bhubaneswar  
09.04.2013.

IN THE COURT OF THE DISTRICT JUDGE, KHURDA  
AT BHUBANESWAR.

Present:

Shri D. Dash,  
District Judge, Khurda  
at Bhubaneswar.

Dated, Bhubaneswar the 09<sup>th</sup> day of April, 2013.

F.A.O.12 of 2011

[ Arising out of the order, dated 20.12.2010 passed by the learned Civil Judge ( Jr. Division), Bhubaneswar in I.A. No.398 of 2010, arising out of C.S. No. 324 of 2010]

Harsha Parida, aged about 45 years, S/o- Muralidhar Parida,  
Plot No. 2155/2852, Samantrapur, P.S -Lingaraj, Dist -Khurda.

..... Appellant.

Versus-

1. The Branch Manager, Bank of Baroda, Nayapalli Branch, P.S -  
Nayapalli, Bhubaneswar, Dist - Khurda,
2. The Authorised Officer, Bank of Baroda, Regional Office, Ispat  
Bhawan, Budut Marg, Unit-IV, Bhubaneswar, Dist - Khurda.  
..... Respondents.

Counsel :

For the Appellant                      Shri A. Swain & assts.

For the Respondent                      Shri Maheswar Pattnaik & assts.

Date of argument                      :            20.03.2013  
Date of judgment                        :            09.04.2013.

JUDGEMENT

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This appeal has been directed against an order dtd. 20.12.2010 passed by the learned Civil Judge ( Jr. Division), Bhubaneswar in I.A No. 398 of 2010, arising out of C. S. No. 324 of 2010 in the matter of a petition under order 39 Rule 3 C.P.C read with Sec. 151, C.P.C. By the said order learned Civil Judge, Jr. Division, Bhubaneswar has dismissed the petition for issuance of temporary injunction restraining the respondents and others from selling and interfering of the peaceful possession of the appellant in respect of the suit land. The appellant as plaintiff has filed the suit for permanent injunction against the respondents to restrain them from interfering with his peaceful possession and from selling the suit land.

2. Appellant's case is that the suit land is his exclusive property and it stands recorded in his name and he is in possession of the same. He has availed a cash credit loan from respondent No.1 by mortgaging the said land in favour of defendant No.1. It is stated that a two storied building stands over the suit land. Further the case of the appellant is that after availing the loan he mortgaged his LIC bonds in favour of the respondent No.1. Thereafter, he went on repaying the loan amount by way of installments. On 04.02.2010 a notice is issued by the respondent No.1 to the plaintiff to deposit a sum of Rs.55,000/- and on 04.02.2010 and 06.03.2010 the appellant claims to have paid a sum of Rs.10,000/- on 22.03.2010 again a sum of Rs.67,537/-. It is also stated that a sum of Rs.33,732 has also been received by Respondent No.2 against LIC policy of the appellant. The plaintiff asserts that he has no intention to cheat the respondents and his desire to clear up the bank dues but the situation has happened because of financial crunch. On 07.05.2010 the respondent No.1 issued notice for possession U/s.8(1) of the securitization Act 2002 and notice of sell of property is said to have been issued on 27.5.2010 which the appellant came to know on 09.06.2010. The appellant avers that he has no objection if the auction is conducted over the property as stated in sale notice dtd. 27.05.2010. While further stating that he has not received the notice as provided under Rule 85 and 9(1) of the Security interest ( Enforcements ) Rules, 2002 stating the auction to be illegal and violation of principle of natural justice. The appellant has approached the Civil Court saying to have a prima facie case and that in the event of sell of the suit land he would suffer loss, irreparable injury which can not be compensated.

The respondents in their objection raising the maintainability categorically mentioned the suit to be not maintainable as per Sec. 34 of the

Act. On the factual aspect it has been stated that the appellant has taken a loan of Rs.9,55,293/- as on 06.03.2010 and did not pay the installment amounts for which, on 6.3.2010 notice was issued U/s.13(2) of the Act calling upon the appellant to pay a loan amount and to discharge his liability within a period of 60 days and in spite of receiving the notice there was no payment so notice for sale of the mortgage property was published in the Odiya daily "SAMAYA" and English daily New Indian Express. It is further stated that initially there was a typographical error with regard to the plot number of the mortgaged property in respect of the plot number being written as 2155/2582 which was written 2155/2852. This when came to their notice the same was rectified by way of another paper publication on 18.06.2010 and those Odiya and English daily. This fact is said to have been communicated by the appellant. In view of these, the respondents case is that the appellant is not entitled to the temporary injunction.

3. The Court below after hearing of the parties and going through the pleadings as well as the documents available has finally refused to pass an order of temporary injunction. It is this order which has been impugned in this appeal. The learned counsel for the appellants submit that the Court below has erred in both law and fact in not granting the temporary injunction when the prima facie case has been established by the appellant in saying that the there has been infraction of the provision and rules.

Learned counsel for the respondents on the other hand supports the order of the court below in saying that in such a matter the court below has rightly refused to pas the temporary injunction and the same is in accordance with the law and the position of law is settled by the Hon'ble Apex Court in case of United Bank of India Vrs. Satyawati Tondon and others.

4. Admittedly, the appellant is a lonee under the respondents and

had mortgaged the suit schedule property now the only dispute i. e. raised is with regard to non-compliance of statutory provision under Rule - 85 and Rule 91 of the Rules of 2002. The appellant does not deny that the respondents have issued a notice to him indicating therein of course a wrong plot number as the mortgaged property. So, also the same has been published in the news paper while for the purpose of sell. The respondents submit that there has been full compliance of the provision of Rule 85 and 92 of the Rules of 2002. It is their case that initially there was a typographical error with regard to the plot number in the sell notice, which has been subsequently rectified. The case falls within the act of 2002. Section 34 of the Act says that any dispute between the parties in respect of the recovery of loan amount shall be adjudicated by the D.R.T and not by the Civil Court. So hear the dispute relate to the following of procedure for attachment of the mortgaged property. When it is said by the appellant that there was non-compliance of the statutory rules, the respondents denied the same. The appellant appears to have suppressed the paper publication rectifying the mistake in the plot number as indicated in the earlier publications. The document goes to show that the appellant has also been informed by letter dtd. 18.06.2010. In such a state of affair the Court below appears to have been rightly found the appellant no prima facie case or arguable case as has been made by the appellant for the purpose of grant of temporary injunction. The balance of convenience under the circumstances can never leaning in favour of the appellant as the injunction prayed for would be stalling the process of legal action sought to be enforced by the respondent. In case of United Bank of India ( Supra ) it has been clearly held that injuncting the bank from taking action noticed U/s.13(4) of the Act is impermissible. Thus, the appellant can also said to be suffering from irreparable loss or injury in case further action

**-:42:-**

proceeds in accordance with the provision of the Act and Rules. For the aforesaid discussion, I find no wrong in the order of the Court below in refusing the prayer for ad interim injunction made by the appellant and the same is hereby confirmed.

Resultantly, the appellant fails and in case without any cost.

District Judge, Khurda  
at Bhubaneswar  
09.04.2013.

Dictated and corrected by me and pronounced in the open Court this day the 9<sup>th</sup> day of April, 2013.

District Judge, Khurda  
at Bhubaneswar  
09.04.2013.



IN THE COURT OF THE DISTRICT JUDGE, KHURDA AT  
BHUBANESWAR.

Present:

Shri D. Dash,  
District Judge, Khurda  
at Bhubaneswar.

Dated, Bhubaneswar the 19<sup>th</sup> day of March, 2013.

F.A.O.35 of 2010

[ Arising out of the order, dated 26.03.2010 passed by the learned Civil Judge ( Sr. Division), Bhubaneswar in I.A. No.659 of 2009, arising out of C.S. No. 1375 of 2009]

Smt. Pankajini Das @ Mohanty, aged - 57 years, W/o- Sri  
Amiya Bhusan Das, Village- Bhainchua, P.S- Baliana, Dist -  
Khurda, at present Plot No.1047/A,. Nuasahi, Badagada, Po/  
PS - Badagada, Bhubaneswar Dist - Khurda.

..... Appellant.

Versus-

Smt. Kanakalata Mahal, aged - 57 years, W/o- Shri Fakir  
Charan Mahal, Plot No.211, Jail Road, Jharpada, P.S-  
Laxmisagar, Po- Budheswari, Bhubanwar, Dist -Khurda.

..... Respondent.

Counsel :

For the Appellant

Shri Somanath Mishra and his assts.

For the Respondent

Shri Ajaya Kumar Mohanty

Date of argument : 28.02.2013  
Date of judgment : 19.03.2013.

JUDGEMENT

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This appeal has been directed against an order dtd. 26.03.2013 passed by the learned Civil Judge ( Sr. Division), Bhubaneswar in I.A No. 659 of 2009, arising out of C. S. No. 1375 of 2009 in the matter of a petition under order 39 Rule 1 & 2 C.P.C read with Sec. 151, C.P.C. By the said order learned Civil Judge, Sr. Division, Bhubaneswar has directed the parties to maintain statusquo with regard to their possession over the suit land pending final disposal of the suit.

2. Facts necessary for disposal of the appeal are as under:-

The respondent as plaintiff has filed the suit for declaration of title, confirmation of possession and permanent injunction with respect to the land described in schedule - A of the plaint under Khata No. 928 / 294 with regards to plot No.1985 / 2804 measuring 15 decimal and then under Khata No.928/63 referring to plot No.1985 measuring Ac.0.018 decimal. The area of the land under plots as stated above are part of the whole area under the plot. It has been indicated in the schedule as Khata No. 293 and Plot No.1647 and in the sketch given in schedule -'B' of the plaint the said land has been shown in red. It is stated that the land originally belonged to one Nilamani Moharana and others and the respondent has purchased under registered sale deed and has taken delivery of possession of the same. It is her case that she could not take proper step for mutation of the suit land that she has purchased under sale deed dtd. 09.10.1981 as by the time she got the sale deed from office of the Sub-Registrar, the stages of settlement operation were over. So it is said

that in the hal R.O.R her name could not find place in respect of her purchased land. Her purchased land under hall Plot No.1985/2804 under under Khata No.631 was recorded in the name of Mahendra Moharana and Satyabadi Moharana and her purchased land under Plot No.1985 was recorded in the name of Chaitanya Moharana. It is said that the appellant purchased that land under Plot No.1985 from Chaitanya Moharana and Plot No.1985/2804 was purchased by the respondent. Thus she claims to be the owner of the schedule land in possession. On 3.10.2009 as the appellant threatened the respondent to interfere in her possession hence, the suit has been filed with the relief as stated above.

The appellant has stated that she has got valid title over land measuring Ac.0.222 decimals in one compact area surrounded by boundary wall since 1984 and 1985 she has got the khatiana and is paying land revenue. She denies to have threatened in the possession of the respondent in any manner at any point of time.

3. The Court below while dealing with the petition under order 39, Rule- 1 & 2 read with Sec.151,C. P. C filed by the responding on going through the pleadings and the documents has gone to say that the appellant is presumed to be in possession over the suit land and that the respondent would not suffer irreparable loss or inconvenience being not in possession. However, the Court below still has gone to pass an order of maintenance of statusquo till adjudication of the rights of the parties over the suit land. It is next stated that on going to the possibility of loss and injury that will be suffered by the parties in the event of injunction is granted or refused it would be just and proper to order for maintenance of statusquo on the subject matter of the suit. Learned counsel for the appellant contends that in view of the conclusion arrived at by the Court below the ultimate order is vulnerable.

It is next submitted by him that the respondent has failed to prima facie satisfy by producing the documents that the land described in schedule -'A' taken together with the sketch map are her purchased land and therefore, the order of maintenance of statusquo passed by the court below is liable to be set aside. Learned counsel for the respondent on the other hand supports the order of the court below in saying that there has been adoption of proper course by the Court below by passing an order to preserve the property in the same state till disposal of the lis. Therefore, he urges for dismissal of the appeal.

4. The suit land described in schedule -'A' of the plaint refers to Plot No.1985/2804 under Khata No.928/294 and it is said that the same has come from Sabik Khata No.293 Plot No.1647 but the plot index to that effect has not been filed in prima facie satisfying the mind of the Court that the said plot is the creation from out of old plot No.1647 similarly situate with respect to Plot No.1985. Although it is said that the suit plot has come from land under old Plot No. 1647 and said land under Khata No.928/63 has also come from old Khata No.293 no document to that effect has been filed. It is found that the appellant has purchased the land out of Plot No.1849 in 1984 when old record of right was there. In the hal ROR two plots i. e. 1985/2004 and 1985 have been created from out of that 1894 old plot. Plot index filed shows that the land dispute relates as to whether the suit land is a part of the appellant's purchased land or respondent's purchased land. So, her in this case when from the document prima facie reveals that the suit land as described by the hal record of right has come from plot No.1849 as per old record of right and when the respondent has not submitted any document to show that these two plots have come from Sabik Khata No. 293 and Plot 1647 as stated in the schedule. The respondent can be said to have no prima facie

case for grant of injunction as prayed for. If that is so then certainly no irreparable injury can be claimed by the respondent nor it can be said that the balance of convenience leans in favour of grant of injunction. In view of above I do not find any reason as to why the trial court having rightly held so has still gone to pass order of statusquo which in the facts and circumstances of the case can be said to be only to the advantage of the respondent and to the disadvantage of the appellant. No reason has also been assigned for the same. Even in absence of that prima facie case as stated above the respondent has not been able to show any material in support of her possession which is necessary for grant of injunction. On the other hand document like record of right leads to infer that the possession of the suit land is in favour of the appellant. In view of the aforesaid, I find that it was not a case where such order of statusquo is required to be passed in the interest of justice. Furthermore, the order of the learned Civil Judge, Sr. Division order is confusing for the reason that when in the ordering portion he refuses for maintenance of statusquo with regard to the possession of the parties in respect of the suit land, in the last part of discussion it is written that it is just and proper to pass interim order for maintenance of statusquo pending final disposal of the suit land. Therefore, in view of my discussion, the order is liable to set aside.

5. In the result, the appeal stands allowed in the circumstances without cost and impugned order dtd. 26.03.2010 passed by the learned Civil Judge, Sr. Division, Bhubaneswar is hereby set aside.

District Judge, Khurda  
at Bhubaneswar  
19.03.2013.

Dictated and corrected by me and pronounced in the open Court this day the 19<sup>th</sup> day of March, 2013.

--:49:--

District Judge, Khurda  
at Bhubaneswar  
19.03.2013.

IN THE COURT OF THE DISTRICT JUDGE, KHURDA AT  
BHUBANESWAR.

Present:

Shri D. Dash,

District Judge, Khurda  
at Bhubaneswar.

Dated, Bhubaneswar the 8<sup>th</sup> day of March, 2013.

F.A.O.05 of 2009

[ Arising out of the order, dated 08.01.2009 passed by the learned Civil Judge ( Jr. Division), Bhubaneswar in I.A. No.538 of 2008, arising out of C.S. No. 434 of 2008]

Nibedita Das, aged about 39 years, W/o- Sri Rabindra Kumar  
Chhatoi, Biharibag, P.S -Lalbag, Dist- Cuttack.  
..... Appellant.

Versus-

Gita Das, aged about 38 years, W/o- Sri Pabitra Mohan  
Das, Resident of Plot No.317 (8), Lingaraj Nagar, Old  
Town, Bhubaneswar, Dist - Khurda.  
..... Respondent.

Counsel :

For the Appellants	Shri S. Jena & B.C. Jena
For the Respondent	Shri

Date of argument	:	06.03.2013
Date of judgment	:	08.03.2013.

JUDGEMENT

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This appeal has been directed against an order dtd. 08.01.2009 passed by the learned Civil Judge ( Jr. Division), Bhubaneswar in I.A No. 538 of 2008, arising out of C. S. No. 434 of 2008 in the matter of a petition under order 39 Rule 1 & 2 C.P.C read with Sec. 151, C.P.C, filed by the respondent by restraining the appellant from entering upon the suit land and interfering in the peaceful possession of the respondent over the same.

2. Facts necessary for disposal of the appeal are as under:-

The respondent filed the suit stating the suit plot initially measuring Ac.0.129 decimals belonged to one Saraswati Pattnaik and from her she purchased an area of Ac.0.057 decimals by registered sale deed dtd. 15.11.2008 and has been in possession of the same as its owner. It is her case that the entire purchased land i. e. the suit land has been kept bounded with wall and with an asbestos house on its Eastern portion. It is stated that the appellant is the owner in possession of the plot No.317 which is the immediate adjoining plot to the suit land on its east and therefore the appellant has no right, title and interest over the suit land. It is alleged that on 20.11.2008 the appellant with her husband and others demolished the eastern side boundary wall and asbestos roofed house of the respondent and attempted to encroach upon the suit land but because of the timely protest the same could be resisted. So, the respondent filed the suit with a petition for temporary injunction.

The appellant does not dispute the title of the respondent over the suit land is concerned. It is her case that the land under plot No.317 is owned by her and she is in possession over the same since the purchase by registered sale deed dtd. 09.05.2007 and 4.6.2007. It is also her case that after purchase she has kept her land having boundary wall and constructing asbestos roofed house, by letting it out to a tenant. She asserts that she has never demolished the boundary wall and asbestos roofed house of the appellant nor had attempted to encroach upon the suit land at any point of time with the aid of others.

2. The Court below on going through the pleadings and supporting documents filed by the respective parties has come to conclusion that there is a dispute between the parties as there is existence of boundary

on their respective lands. Next he has further observed that under the circumstances it can not be completely ruled out that the O.P is trying to occupy some portion of the suit land belonging to the plaintiff under Plot No.316. Therefore, the Court below has find out reasons to say that there is threat to the suit properties from the side of the appellant and has felt the necessity to protect and preserve the suit property as it is by way of passing an order of injunction side by side saying that the respondent would be put irreparable injury in the event of refusal of injunction and the balance of convenience leans in favour of the respondent favouring grant of injunction. With all these, the court below has finally restrained the appellant from entering upon the suit land and interfering in the peaceful possession of the petitioner over the same.

3. The learned counsel for the appellant submits that there is absolutely no prima facie case so far as the attempt to interfere or interference with the possession of the respondent over the suit land by appellant and others. It is his submission that simply stating that a particular land belongs to a person and when it not disputed, an order of injunction can not be passed against another just inferring from some facts simply being stated in the averment as regards threat to dispossess etc., that there remains possibility for that person to encroach leading to issuance of order of an injunction. According to him the court below ought to have ascertained as to whether the appellant had actually attempted to dispossess and taken up any action in that direction. It is also his submission that the Court below's conclusion as regards balance of convenience and irreparable loss in the facts and circumstances of the case in the absence of prima facie case for injunction as prayed for are untenable. So, he urges for setting aside the order impugned in this appeal.

Learned counsel for the respondent on the contrary submits that the Court below has rightly passed the order of injunction against the appellant when the appellant has clearly stated to have no claim whatsoever over the suit land. Thus, he urges in favour of confirmation of the order impugned in this appeal.

4. From the pleadings of the parties it is found that when the respondent claims right, title, interest and possession over her purchased land under Plot No. 316; the appellant claims right, title, interest and possession over the plot No.317. Admittedly both the plots adjoin each other. It is interesting to note that in the case when the respondent claims to have constructed boundary wall which also on that side of land adjoining the land of the appellant, the appellant also claims that he has constructed his boundary on that side. Moreover, when respondent further claims to have constructed an asbestos roofed house; it is the case of the appellant that he has constructed an asbestos roofed house over his purchased land.

Therefore such state of affair when emanates from the pleading, in order to find out a prima facie case for grant of temporary injunction as prayed for / as passed by the court below in my considered view the first satisfaction is required to be arrived at that the respondent had her boundary wall on that side of her land and that was demolished as pleaded and if so whether the appellant had any boundary wall existing then or not on that side of the land which adjoins the suit land. This prima facie satisfaction can only lead to the establishment of a prima face case in favour of the respondent. On going through the record and the documents filed by the parties, I am unable to arrive at such satisfaction. The proper course would have been in the present case for the Respondent to move for deputation of a Commissioner order 39 Rule 7 C.P.C to ascertain the said state of affair. The respondent

having not moved forward in that direction; by simply submission filing his registered sale deed and other documents in support of showing her right, title, interest and possession over the suit land which are not at all disputed by the appellant, can not make herself entitled to the grant of injunction of restraining the appellant from entering upon her land and interfering in her possession over the same. The repercussion of such an order without aforesaid satisfaction is likely to result further litigation that the respondent may take advantage in entering upon the land belonging to the appellant stating that her land extends to a particular extent. Therefore, I am unable to accept the view taken by the trial Court below that the respondent has any prima facie case for order of injunction as passed in her favour. In that view of the matter the balance of convenience can not be said to be leaning in her favour. In the facts and circumstances and in view of my aforesaid discussion the respondent can not be said to be suffer from irreparable loss in the event of refusal of injunction. In the wake of aforesaid, I find that the order impugned in this appeal is liable to be set aside.

5. In the result, the appeal stands allowed and in the circumstances without any cost and the order passed by the learned Civil Judge (Jr. Division), Bhubaneswar in I.A. No. 538 of 2008, arising out of C.,S. No. 434 of 2008 is hereby set aside.

District Judge, Khurda  
at Bhubaneswar  
08.03.2013.

Dictated and corrected by me and pronounced in the open Court this day the 08<sup>th</sup> day of March, 2013.

District Judge, Khurda  
at Bhubaneswar  
08.03.2013.

IN THE COURT OF THE DISTRICT JUDGE, KHURDA AT  
BHUBANESWAR.

Present:

Shri D. Dash,  
District Judge, Khurda  
at Bhubaneswar.

Dated, Bhubaneswar the 4<sup>th</sup> day of March, 2013.

F.A.O.13 of 2012

[ Arising out of the order, dated 09.01.2012 passed by the learned Civil Judge ( Sr. Division), Bhubaneswar in I.A. No.1165 of 2011, arising out of C.S. No. 1971 of 2011]

1. Basanti Dei, aged about 53 years, W/o- Nityananda Ojha, D/o- Late Chaitanya Moharana, At/po- Aiginia, P.S- Khandagiri, Bhubaneswar, Dist - Khurda, At present - Jagasarapatana, Po-Madanpur, P.S-Jatani, Dist - Khurda,
2. Smt. Sorojini Moharana, aged about 44 years, W/o- Satrughna Moharana, D/o- Late Chaitanya Moharana, At/Po- Aiginia, P.S- Khandagiri, Bhubaneswar, Dist - Khurda, At present - Jagasarapatana, Po-Madanpur, P.S-Jatani, Dist - Khurda,

..... Appellants.

Versus-

1. Sri Jagannath Promoters and Builders Represented through its partner Kailash Ch. Rath, S/o- Kasinath Rath, of Giri Road ( Giri Complex ) Berhampur, Dist- Ganjam, Coroprate Office At - Plot No. N-1-A/5, IRC Village, Nayapalli, P.S-Nayapalli, Bhubaneswar, Dist -Khurda.
2. Sri Jagannath Promoters and Builders Represented through its Managing partner Pradipta Kumar Biswasray, S/o- Late Binod Bihari Biswasray, of Giri Road, Berhampur, Dist- Ganjam, At present Office At - Plot No.N-2/152, IRC Village, Nayapalli, P.S-Nayapalli, Bhubaneswar, Dist - Khurda.
3. Sri Jagannath Promoters and Builders Pvt. Ltd. Represented through its Managing Director, Pradipta Kumar Biswasray, S/o- Late Binod Bihari Biswasray, of Giri Road, Berhampur, Dist- Ganjam, At present office at Plot No.N-2/152, IRC Village, Nayapalli, P.S- Nayapalli, Bhubaneswar, Dist -Khurda.

..... Respondents.

Counsel :

For the Appellants	Shri Trusar Kanta Mishra and his assts.
For the Respondent	Shri R.K. Rout and his assts.

Date of argument	:	14.02.2013
Date of judgment	:	04.03.2013.

JUDGEMENT

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This appeal has been directed against an order dtd. 09.01.2013 passed by the learned Civil Judge ( Sr. Division), Bhubaneswar in I.A No. 1165 of 2011, arising out of C. S. No. 1971 of 2011 in the matter of a petition under order 39 Rule 1 & 2 C.P.C read with Sec. 151, C.P.C, dismissing the same filed by the appellants.

2. Facts necessary for disposal of the appeal are as under:-

The appellants have filed the suit for partition, declaration and permanent injunction. According to their case, the suit property belongs to one Maguni Moharana in whose name record of right published in the year, 1962 stands. It is said that the suit property on death of Maguni devolved upon his two sons namely, Chaitanya and Rajkishore Moharana. The appellants are the daughters of Chaitanya, whereas defendant Nos. 1 to 5 are the sons of Rajkishore; defendant Nos. 6 & 7 are daughters of Rajkishore. It is their case that the suit property was never partitioned by metes and bounds either between Chaitanya and Rajkishore or thereafter. The appellants claimed 2/9<sup>th</sup> share over the same. It is stated that Chaitanya during his life time along with defendant No.1 & 2 had alienated a portion of the suit land without the knowledge of the plaintiffs and similarly defendant Nos. 3 to 7 have alienated

the rest portion of the suit land in favour of respondents. The respondents by virtue of their illegal purchase have not acquired their right, title and interest over the suit land. It is alleged that they are creating disturbance on the possession of the appellants and trying to further alienate different portions of the suit land to others in order to defeat the claim of the appellants.

2. The respondents have set out a case that there was a mutual partition of the entire property measuring Ac.1.285 decimals between Rajkishore and Chaitanya and thereafter the respondents have purchased the entire area under different sale deeds. They claim to have been in possession of the entire area since the date of their purchase and subsequently converted the suit land from agricultural land to homestead land. It is their positive case that because of the boom in the market price of the land the successor of Chaitanya have joined their with the evil intention and hence the suit. It is further stated that the appellants have executed a registered deed of agreement for sale in favour of one Bimbadhar Sundaray in respect of land measuring Ac.0.642.5 decimals by falsely from a lady namely, Badani Moharana as the wife of Chaitanya and Biren one of the sons of Chaitanya has stood as the attesting witness. It is thus stated that after death of Maguni entire property devolved upon Chaitanya and Rajkishore. Furthermore an area of Ac.324 decimals of land was sold by Chaitanya during his life time to one Pramod Ch. Pattnaik who in turn has sold the same to all these respondents. It is also stated that Chaitanya had further alienated Ac.108 decimals of land in favour of Jani @ Janaki Bhujabala and in that sale deed factom relating to actual partition find place in the recital. This Jani @ Jankai Bhujabla has in turn sold this land to the respondents. Chaitanya had also sold Ac.210 decimals along with defendant No.1 & 2 and in that sale deed factom of partition finds indicated. The respondentS have also purchased Ac.214

decimals of land from defendant No.5 the son of Rajkishore wherein defendant No. 3, 4,6 and 7 have given their consent. Defendant No.3 & 4 have also sold land measuring Ac.0.428 decimals to these respondents. In the ultimate it is stated respondent have purchased 50 % share of the Chaitanya and 50 % share of Rajkishore, which covers entire suit land and they claimed to be in possession of the suit land as lawfully. In this way they resist the move for injunction at the instances of the appellants.

3. Learned counsel for the appellants submit that the court below ought to have allowed the petition under order 3 Rule 1 & 2 read with section 151, C.P.C when there is no such serious challenge at this stage to the fact that the appellants are the daughters of Chaitanya.

Learned counsel for the respondents on the other hand supports the order of the Court below contending that the same a well reasoned one and the court below has rightly found absence of any prima facie or arguable case in favour of the appellants. Further supports the conclusion of the court below that the balance of convenience does not leans in favour of the appellants and they would not suffer any irreparable loss in the event of injunction as refused.

4. It may be stated here that this appeal having been filed on 17.1.2012 no interim order even though prayed for has been passed. Perusal of the sale deeds reveals that Chaitanya in order to meet the legal necessity, marriage expenses of his daughter and repayment of loan has executed the sale deeds. When the appellants submit that there was no mutual partition the recitals in the sale deed negate the same. Moreover, the appellants had suppressed the factom of agreement for the same land coming into existence on 26.09.2011. This has been brought to light by the respondents to show supression of material fact and to contend that how the move appears to be

mischievous with an evil design to serve evil purpose. The appellants are also the executants and they have clearly recited therein as regards the mutual partition between Rajkishore and Chaitanya. The very acceptance of such a deed of agreement provide support to the case of the respondents prima facie and exposing collusion and that this belated move filing the suit is the outcome of the greed for materialization of evil intention in view of the steep rise of price of land.

So, I am at one with the view with the trial court that the approach of the appellant is not with clean hand and it disentitles them to get any equitable relief. Moreover when it is said they are in possession of the suit property the very agreement for sale totally negates the said claim.

Therefore, in my considered view the court below has rightly arrived at the conclusion that there is no prima facie and arguable case of the petitioner for the purpose of grant of relief of injunction as prayed for.

In the facts and circumstances of the case and in view of my above discussion the view of the Court below also the balance of convenience does not lean in favour of the appellants and that the appellants can not be said to be suffering from irreparable loss in case of refusal of injunction. Therefore, the impugned order is not liable to be interfered with.

4. In the result, the appeal stands dismissed and in the facts and circumstances without any cost. It is needless to say that the discussion as and any observation made above will have no influence at all in the minds of the Court below while deciding the suit.

District Judge, Khurda  
at Bhubaneswar  
04.03.2013.

**--61--**

Dictated and corrected by me and pronounced in the open Court this day the  
04<sup>th</sup> day of March, 2013.

District Judge, Khurda  
at Bhubaneswar  
04.03.2013.

IN THE COURT OF THE DISTRICT JUDGE, KHURDA AT  
BHUBANESWAR.

Present:

Shri D. Dash,  
District Judge, Khurda  
at Bhubaneswar.

Dated, Bhubaneswar the 19<sup>th</sup> day of March, 2013.

F.A.O.35 of 2010

[ Arising out of the order, dated 26.03.2010 passed by the learned Civil Judge ( Sr. Division), Bhubaneswar in I.A. No.659 of 2009, arising out of C.S. No. 1375 of 2009]

Smt. Pankajini Das @ Mohanty, aged - 57 years, W/o- Sri Amiya Bhusan Das, Village- Bhainchua, P.S- Baliana, Dist - Khurda, at present Plot No.1047/A,. Nuasahi, Badagada, Po/ PS - Badagada, Bhubaneswar Dist - Khurda.

..... Appellant.

Versus-

Smt. Kanakalata Mahal, aged - 57 years, W/o- Shri Fakir Charan Mahal, Plot No.211, Jail Road, Jharpada, P.S- Laxmisagar, Po- Budheswari, Bhubanwar, Dist -Khurda.

..... Respondent.

Counsel :

For the Appellant            Shri Somanath Mishra and his assts.  
For the Respondent            Shri Ajaya Kumar Mohanty

Date of argument        :        28.02.2013  
Date of judgment        :        19.03.2013.

JUDGEMENT

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This appeal has been directed against an order dtd. 26.03.2013 passed by the learned Civil Judge ( Sr. Division), Bhubaneswar in I.A No. 659 of 2009, arising out of C. S. No. 1375 of 2009 in the matter of a petition under order 39 Rule 1 & 2 C.P.C read with Sec. 151, C.P.C. By the said order learned Civil Judge, Sr. Division, Bhubaneswar has directed the parties to maintain statusquo with regard to their possession over the suit land pending final disposal of the suit.

2. Facts necessary for disposal of the appeal are as under:-

The respondent as plaintiff has filed the suit for declaration of title, confirmation of possession and permanent injunction with respect to the land described in schedule - A of the plaint under Khata No. 928 / 294 with regards to plot No.1985 / 2804 measuring 15 decimal and then under Khata No.928/63 referring to plot No.1985 measuring Ac.0.018 decimal. The area of the land under plots as stated above are part of the hole area under the plot. It has been indicated in the schedule Khata No. 293 and Plot No.1647 in the sketch given in schedule -'B' of the plaint the said land has been shown in red. It is stated that the land originally belong to one Nilamani Moharana and others and the respondent has purchased under registered sale deed and has

taken delivery of possession of the same. It is her case that she could not taken proper step for mutation of the suit land that she has purchased under sale deed dtd. 09.10.1981 as by the time she got the sale deed from office of the Sub-Registrar, the stages of settlement operation were over, so it is said that in the hall R.O.R her name could not find place in respect of her purchased land. Her purchased land under hall Plot No.1985/2804 under under Khata No.631 was recorded in the name of Mahendra Moharana and Satyabadi Moharana and her purchased land under Plot No.1985 was recorded in the name of Chaitanya Moharana. It is said that the appellant purchased that land under Plot No.1985 from Chaitanya Moharana and Plot No.1985/2804 was purchased by the respondent. Thus claims to be the owner of the schedule land in possession. On 3.10.2009 the appellant threatened the respondent to interfere in her possession hence, the suit has been filed with the relief as stated above.

The appellant has stated that she has got valid title over land measuring Ac.0.222 decimals in one compact area surrounded by boundary wall since 1984 and 1985 she has got the khatiana and is paying land revenue. She denies to have threatened in the possession of the respondent in any manner at any point of time.

3. The Court below while dealing with the provision under order 39, Rule- 1 & 2 read with Sec.151,C. P. C filed by the responding on going through the pleadings and the documents which has gone to show that the appellant is presumed to be in possession over the suit land and that the respondent would not suffer irreparable loss or inconvenience being not in possession has still gone to pass an order of maintenance of statusquo till adjudication of the rights of the parties over the suit land. It is next stated that on going to the possibility of loss and injury that will be suffered by the

parties in the event of injunction is granted or refused it would be just and proper to order for maintenance of statusquo on the subject matter of the suit. Learned counsel for the appellant contends that in view of the conclusion arrived at by the Court below the ultimate order is vulnerable. It is next submitted by him that the respondent has failed to give prima facie satisfy that by producing the documents that the land described in schedule -'A' taken together with the sketch map are her purchased land and therefore, the order of maintenance of statusquo passed by the court below is liable to be set aside. Learned counsel for the respondent on the other hand supports the order of the court below in saying that there has been proper adoption in order to preserve the property in the same state till dismissal of the lis. Therefore, he urges for dismissal of the appeal.

4. The suit land described in schedule -'A' of the plaint refers to Plot No.1985/2804 under Khata No.928/294 and it is said that the same has come from Sabik Khata No.293 Plot No.1647 but the plot index to that effect has not been filed in prima facie satisfying the mind of the Court that the said plot is the creation from out of old plot No.1647 similarly situate with respect to Plot No.1985. Although it is said that the suit plot has come from land under old Plot No. 1647 and said land under Khata No.928/63 has also come from old Khata No.293 no document to that effect has been filed. It is found that the appellant has purchased the land out of Plot No.1849 in 1984 when old record of right was there. In the hall ROR two plots i.e. 1985/2004 and 1985 have been created from out of that 1894 old plot. Plot index has been filed to that effect. The land dispute relates as to whether the suit land is a part of the appellant purchased land or respondent purchased land. So, here in this case when from the document prima facie it is seen that the suit land as described by the hall record of right has come from plot No.1849 as per old

record of right and when the respondent has not submitted any document to show that these two plots have come from Sabik Khata No. 293 and Plot 1647 as stated in the schedule. The respondent can be said to have no prima facie case for grant of injunction as prayed for. If that is so then certainly no irreparable injury can be claimed by the respondent nor it can be said that the balance of convenience leans in favour of grant of injunction in such state of affair I do not find any reason as to why the trial court having rightly held so has still gone to pass order of statusquo which in the facts and circumstances of the case can be said to be only the advantage of the respondent and to the disadvantage of the appellant. No reason has also been assign for the same even in absence of that prima facie case as stated above the respondent has no evidence to show any thing as regards her possession. On the other hand document like record of right leads infer the possession of the suit land in favour of the appellant. In view of the aforesaid, I find that it was not a case where such order of statusquo is necessary to pass in the interest of justice. Furthermore, the learned Civil Judge, Sr. Division order is confusing. When in the ordering portion he refuges for maintenance of statusquo with regard to the possession of the parties in respect of the suit land. In the last of discussion it is written that it is just and proper to pass interim order for maintenance of statusquo pending final disposal of the suit land.

5. In the result, the appeal stands allowed in the circumstances without cost and impugned order dtd. 26.03.2010 passed by the learned Civil Judge, Sr. Division, Bhubaneswar is hereby set aside.

District Judge, Khurda  
at Bhubaneswar  
19.03.2013.

Dictated and corrected by me and pronounced in the open Court this day the 19<sup>th</sup> day of March, 2013.

-:67:-

District Judge, Khurda  
at Bhubaneswar  
19.03.2013.

IN THE COURT OF THE DISTRICT JUDGE, KHURDA AT  
BHUBANESWAR.

Present:

Shri D. Dash,

District Judge, Khurda  
at Bhubaneswar.

Dated, Bhubaneswar the 28<sup>th</sup> day of January, 2013.

F.A.O. 149 of 2012

[ Arising out of the order, dated 20.10.2012 passed by the learned Civil Judge ( Jr. Division), Bhubaneswar in I.A. No.440 of 2012, arising out of C.S. No.389 of 2012]

1. Shri Chandan Prasad Mohanty, aged about 43 years, S/o- Late Jagannath Prasad Mohanty, Managing Director, M/s. Prabhujee Projects Pvt. Ltd Plot No. 383 IRC Village, P.S- Nayapalli, Bhubaneswar, District - Khorda.
2. Shri Gautam Behera, aged about 39 years, S/o- Late Subal Behera, resident of Kujimahal, PO /PS- Chandaka, Dist-Khorda.
3. Gandharbsen Behera, aged about 53 years, S/o- Late Sankar Behera, resident of Kujimahal, PO/P.S- Chandaka, District -Khorda.

..... Appellants.

Versus-

Sajani Mahabhoi, aged about 39 years, W/o- Laxmidhar Mahabhoi, Village- Upper Basta Mundulisahi, P.S-Jatni, District- Khorda.

..... Respondent.

Counsel :

For the Appellants	Shri Ashok Kumar Mohapatra and
his	assts.
For the Respondent	Shri P.K. Routray.

Date of argument	:	03.01.2013
Date of judgment	:	28.01.2013.

JUDGEMENT

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This appeal has been directed against an order dtd. 20.10.2012 passed by the learned Civil Judge ( Jr. Division), Bhubaneswar in I.A No. 414 of 2012, arising out of C. S. No. 389 of 2012.

2. Facts necessary for disposal of the appeal are as under:-

One Kambhu Behera was the original owner of the suit land, he died in 1959 leaving behind his son Subala and two daughters namely Gurei and Tula. Subala predeceased his wife Ali and they died issueless. Respondent and proforma defendant No.7 are the son and daughter of Gurei. Defendant No.3, 4 and 5 are the three daughters of Tula. In the settlement R.O.R of 1962 the land stood recorded in the name of Subala alone without any mention of the name of his two sisters. It is stated that on the death of Subala and his wife Ali, Gurie and Tula became owner of the entire property as the interest of Subala and Ali therein devolved upon them and as Subala died leaving no issue. In this way it is claimed that the Respondents No. 3 to 5 and 7 are the co-owners with respect to the suit land. It is further stated by the respondent that he with proforma defendant No.7 were in peaceful possession of the suit land when on 1.7.2012 the appellant No.1 attempted to measure the suit land and then on being protested he showed a deed of general power of attorney executed by the defendant No.1 and 2 challenging the claim of the plaintiff and proforma Defendant No.7. It is also stated that a deed of acknowledgment of adoption showing that Subala had adopted appellant No.2 has been created for the purpose. According to the case of the respondent there was no such adoption when it is said that the adoption ceremony has took place in 1982. The respondents case is that Subala died in the year, 1968. The respondent

has pleaded it to be a plot hatched by one Bani Behera in collusion of one deed writer and Sankara Behera who is the father of Goutam Behera. Thus stating that the appellant No.1 is trying to dispossess on the strength of a general power of attorney said to have executed by appellant No.2 and 3, the self styled adopted son of Subala and his brother, appellant No.3 present suit's cause of action is indicated. It is also their case that when the so called deed of acknowledgment of adoption coming in the year, 1983 Subala had died in the year, 1968. So, they challenged the factum of adoption by specifically asserting that it is based on fraud and collusion. The appellant No.1 has also executed a sale deed in favour of the appellant No.2 and then appellant No.2 and one Gitanjali executed the general power of attorney in favour of appellant No.1. Alternatively it is pleaded without partition of the suit property in metes and bounds such sale even accepting the case of adoption for a moment is void and not binding, therefore, the suit has been filed for a declaration that Appellant No.1 is not the adopted son of Subala. In the said suit an interim application under order 39, Rule-1 & 2 read with Section 151 C.P.C. has been filed for restraining the appellants from alienating and making any construction over the suit land till it's disposal.

3. The Appellant No.1; Defendant No.3, 4 and 6 have filed three sets of written statements and Appellant No.1 as well as Appellant No.2 have filed 2 sets of objections. It is their case that mother of the respondent has filed a suit bearing No.2102 of 2011 against the defendants seeking the same and similar relief as sought for in the suit and therefore, the present suit is an abuse of process. It is asserted that appellant No. 2 is the adopted son of Subala and that Subala and Ali died leaving him as their heir and sole successor. They have also asserted that appellant No.2 being the absolute owner of the property has sold the entire suit property to appellant No.2 and

thereafter one Chintamani Sahu raised dispute with regard to the title of the suit property on the plea that he has purchased from Defendant No.3 to 5 and when he realised that defendant No.3 to 5 have no right, title and interest over the suit property and the sale deed executed in his favour is void, he abandoned his claim over the suit property. With these pleadings they resist the move for injunction.

4. Learned counsel for the appellants submits that the suit being for a declaration that the adoption of Appellant No.2 by Subala is void, there was no occasion for the respondent to claim any injunction with respect to the proper in question. According to him the court below erred in law by passing such an order of maintenance of staus quo over the suit schedule property till disposal of the suit.

5. Learned counsel for the respondent on the other hand submits that the Court below has adopted the right course for the shake of preservation of the property till disposal of the lis and decision on all the controversies emanating from the pleadings of the parties. Therefore, it is his submission that there is no ground to interfere with the said order.

6. Admittedly, the property of original stood recorded in the name of Kambhu Behera as per R.O.R of 1913 settlement. It is also not denied that he died leaving behind son Subala and two daughters Gurei and Tula. The respondent is the daughter of Gurei. When respondent claim that Subala died issueless it is the claim of the appellants that Subala during his life time had adopted appellant No.2. So, the factum of adoption is under challenge and would stand as a main issue for determination. In support of adoption when the deed of acknowledgment of adoption said to have been executed by Ali, wife of Subala is perused, it is found that the recital in the said deed is there to the effect that the adoption took place in the year, 1982. Now it is pleaded

by the respondent that Subala died long prior i. e. in the year, 1968. The deed of acknowledgment of adoption has been executed by Ali an illiterate woman and it is not indicated in the said sale deed as to when Subala died. The deed unlike a deed of adoption does not carry any legal presumption. The recording in the year, 1962 in the name of Subala alone is under the situation is an jeopardy. Even admitting for a moment that appellant No.2 is the adopted son of respondent in view of the pleadings it will definitely arise for consideration in the suit as to whether he was having the exclusive right, title and interest over the property or not. All these issues can only be adjudicated on receiving the evidence. Therefore preservation of the property in the present state as it stands is certainly the need to see that lis does not become infructuous since in the present proceeding all these issues are not permitted to be decided. The court below in my considered view thus having passed the order of status quo, I do hereby subscribe to the same.

7. In view of the aforesaid discussion, the appeal stands dismissed and in the circumstances without cost.

District Judge, Khurda  
at Bhubaneswar  
28.01.2013.

Dictated and corrected by me and pronounced in the open Court this day the 28th day of January, 2013.

District Judge, Khurda  
at Bhubaneswar  
28.01.2013.

IN THE COURT OF THE DISTRICT JUDGE, KHURDA AT  
BHUBANESWAR.

Present:

Shri D. Dash,  
District Judge, Khurda  
at Bhubaneswar.

Dated, Bhubaneswar the 15<sup>th</sup> day of November, 2012.

F.A.O. 46 of 2010

[ Arising out of the order, dated 17.09.2009 passed by the learned Civil Judge ( Jr. Division), Bhubaneswar in I.A. No.236 of 2008]

1. Dayan Khan, age- 52, S/o- Late Dilbur Khan,
2. Nawab Khan, age-57, S/o- Late Adil Khan,  
Both are of Padanpada, P.O. Nariso, P.S- Balipatana, Dist  
Khurda,
3. Manguli Mallick, age- 62 years,
4. Akrura Mallick, age- 56 years,

5. Sadie Mallick, age- 50 years,
6. Dinabandhu Mallick, age- 42 years,  
Sl. No. 3 to 6 are son of Late Nata Mallick, Vill-  
Srirampur, P.O. - Nariso, P.S- Balipatana, Dist- Khurda.
7. Chakradhar Behera, age- 62, S/o- Late Banacha Behera,  
at- Padan Pada, PO- Nariso, P.S- Balipatana,

Dist- Khurda.

..... Appellants.

Versus-

1. Radhakanta Thakur, Situated inside Sri Brajabasi Math @  
Sri Radhakanta Moth, At/Po- Nuagaon, P.S- Niali,  
Dist- Cuttack. Represented by Mohant Sri Madan  
Mohan Das, aged about - 44 years, Guru Late  
Mohant Krushan Chandra Das, hereditary trustee of the  
institution at the above address.
2. Bankanidhi Swain, age-- 44, S/o- Shri Rasananda Swain,  
At-Srirampur, PO-Nariso, P.S-Balianta, Dist-Khurda.

..... Respondents.

Counsel :

For the appellant                      Shri B.C Mallick and his assts.  
For the Respondent                      Shri R.K. Routray.

Date of argument                      :            07.11.2012  
Date of judgment                        :            15.11.2012.

JUDGEMENT

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Being aggrieved by an order dtd. 17.09.2009 passed by the  
Civil Judge (Jr. Division), Bhubaneswar in I.A. 236 of 2008, arising out of C.S.  
No. 167 of 2007 this appeal has been filed in the matter of a petition under  
order 39 Rule 1 & 2 read with section 151, Cr. P. C. filed by the Appellants.  
By this order learned Civil Judge (Jr. Division), Bhubaneswar has allowed the  
petition filed by the Respondents having having temporarily restrained from

entering upon the suit land and creating any disturbance in the possession of the Respondent.

2. Facts necessary for disposal of the appeal are as under:-

The Respondent as plaintiff has filed the suit for permanent injunction and other reliefs wherein the Appellants are the defendants. The suit is in relation to the land corresponding to Sabik Plot No. 6 as per the settlement record of rights of the year, 1920 and it was under Nijadakhil status belonging to the Respondent. It is stated that upon vesting of the estate, for some reason or other the land could not be settled in favour of the Respondent and it went to be recorded under Benami Bandobasta in the name of the State as 'Abadajogya Anabadi'. However, the note of the possession of the Respondent found place. It is claimed that Respondent remained in possession despite this recording and it is now also the same being possessed through Mahanta Madan Mohan Das who is the hereditary trustee of the Respondent deity. There was a challenge to the recording by the Asst. Consolidation Officer at the behest of the Respondent by way of revision U/s.37(2) of OCH & PFL Act, 1972 before the Director Consolidation which is pending for adjudication. In the mean time, state has initiated encroachment cases against the Respondent who has obtained the receipts thereof. It is ascertained that the Appellants having no manner of right, title and interest over the suit land taking advantage of this recording by forming a group wanted to create disturbance over the possession of the Respondent.

3. The Respondent's case is that the appellants have no title and possession over the suit land and until the same is decided or declared by the competent court of law, there can not be a claim at their behest to restrain the Appellants who are no physical possession over the suit land. It is also their case that the land was with bushes and trees here and there and they

are in cultivating possession having reclaimed the same.

4           The Court below having considered the documents filed on behalf of the Respondent and weighing the case and counter case of the parties and other attending circumstances as they emanate has found a prima facie case in favour of the Respondent followed by the finding that the balance of convenience for the purpose of grant of injunction restraining the Appellants from interfering in the possession of the Respondent leans in favour of the Respondent and in the absence of any order of restraint they would suffer irreparable injury so far as the occupation of the suit land is concerned with the satisfaction as above, the order has been passed which has been impugned in this appeal.

5.           Learned counsel for the Appellants submits that the land at present can not be said to be belonging to the Respondent as it is recorded in the name of the State and as the appellants are in physical possession over the same. So there remains no reason to say that the Respondent has prima facie case and so also other ingredients of balance of convenience and irreparable loss do not run in favour of grant of injunction as ordered

Learned counsel for the Respondent in supporting the views taken by the court below has further urged that the documents show the possession of the Respondent and recording is still under challenge before the competent court of law and when admittedly the old record shows prima facie ownership in favour of the Respondent, the order passed by the Court below is not liable to be interfered with.

6.           Now going through the case of the respective parties as stated above as well as submission of the learned counsel appearing on their behalf let me proceed to examine as to whether the satisfaction arrived by the court

below are well founded or not.

Undisputedly, the land at present stands recorded in the Government khata and this recording is under challenge before the Director Consolidation. The record of right of 1928 settlement discloses that under Sabik Khata No.39, Plot No.6 the land measuring Ac.8.48 decimals stood in the name of the Respondent -deity under Nizdakhala status and the land register prepared by the consolidation authority also indicate the name of the Respondent. The L.R Plot No.1023 as recorded in the land register by the consolidation authority is the land which has been recorded under hal plot No.765 remaining the same under hall Khata No.908. The initiation of the encroachment cases against the Respondent also supports the case of possession. In such state affair the claim of the Respondent that the for some reason or other the land could not be settled after the vesting operation, can not be out rightly rejected and I agree with the view of the Court below that this is not proper stage to decide the same. All these documents prima facie tend to show the possession of the suit land to have been with the Respondent. The Appellants without filing a scrap of paper by mere assertions can not succeed to over turn their effect. Thus I am subscribe to the view taken by the Court below that the Respondent has shown a better case of possession over the suit land than the Appellants. Admittedly, here the Respondent is not raising any allegation against the State but the allegations are directed against the Appellants that taking above of such recording of the land in the name of the State with a view to garb the same, they are in a mood to unnecessary create disturbance. In view of the specific stand of the Respondents that they are in possession deriving support from documents more particularly when the claim of possession of Appellants as stated to be without any basis that too remains confined to mere assertions in counter; I

**-:78:-**

found it to be a fit case where pending final determination of the title of the Respondent by the competent authority their possession needs to be protected against those who have no better right. The Court below therefore, in my humble view has not committed any error either in fact or in law in passing the impugned order restraining the Appellants by holding that the balance of convenience for grant of temporary injunction as prayed for leans in favour of the Respondent and in the absence of that order of protection they would suffer irreparable injury. Therefore, the order of Court below is not liable to be interfered with and is hereby confirmed.

In view of the aforesaid discussion, the appeal stands dismissed and in the circumstances without cost.

District Judge, Khurda  
at Bhubaneswar  
15.11.2012.

Dictated and corrected by me and pronounced in the open Court this day the 15th day of November, 2012.

District Judge, Khurda  
at Bhubaneswar  
15.11.2012.

IN THE COURT OF THE DISTRICT JUDGE, KHURDA AT  
BHUBANESWAR.

Present:

Shri D. Dash,  
District Judge, Khurda  
at Bhubaneswar.

Dated, Bhubaneswar the 15th day of November, 2012.

F.A.O. 47 of 2012

[ Arising out of the order, dated 14.03.2012 passed by the learned Civil Judge ( Jr. Division), Bhubaneswar in I.A. No.152 of 201 corresponding to C.S. No. 1562/2010]

Mohan Pradhan, aged about 43 years, S/o- Late Nrusingha Pradhana of Vill- Basantapedi, PO-Balakati, P.S- Baliana, Dist - Khurda.

.....Appellant

Versus-

Gouranga Charan Dash, aged about - 54 years, S/o- Late Batakrushna Dash, At- Pratapsasan, Mala, PO- Balakati, P.S-Baliana, Dist - Khurda.

. .....Respondent.

Counsel :

For the appellant                      Shri H.S. Pati and his assts.

For the Respondent                      Shri R. C. Sadangi and his assts.

Date of argument                      :            15.11.2012  
Date of judgment                        :            15.11.2012.

JUDGEMENT

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This appeal has been preferred challenging an order dtd. 14.03.2012 passed by the learned Civil Judge ( Jr. Division ) in I.A. No.152 of 2011 arising out of C. S. No.562 of 2010 in the matter of a petition under order 39, Rule - 1 & 2 read with 151, C.P.C by which the said petition filed by the appellant has been dismissed.

2. Facts necessary for disposal of this appeal are as under:-

The suit land in the plaint is said to be a purchased land of the appellant according to his case and it was purchased from one Balaram Mohanty and then mutated in his favour. But thereafter, he had mortgaged the land with the respondent when he was in need of some money. The mortgaged money being offered later, the respondent did not accept the same and on enquiry it was ascertained that in stead of a mortgage deed, the respondent has created a sale deed in his favour and accordingly has made further progress by getting it mutated.

The respondent in his objection while denying the factum of creation of any deed of mortgage claims to have purchased the land under that sale deed and according to him it is a story created for the purpose after lapse of 22 years.

3. Learned counsel for the appellant submits that in view of the pleadings of the parties it is required to be decided in the suit as to whether the deeds in question are purpose of mortgage or sale. It is his submission that in the facts and circumstances the balance of convenience leans in favour of an order of an interim injunction as prayed for and in the absence of that it is appellant who would suffer irreparable loss. By supporting the order of the

Court below, the learned counsel for Respondent further submits that even on the admitted facts and circumstances of the case it is not a fit case where the appellant can be held entitled to get the relief of the temporary injunction during pendency of the suit.

4. Perusal of the order impugned in this appeal reveals the court below by taking cognizance of the fact that the appellant has sold plot No.3457 under Khata No.1200 measuring Ac.0.15 decimals which is one out of the two suit plots sold to one Dillip Kalia when the order of status quo was in force for which the court below has found him is not entitled to this discretionary relief saying that he has no prima facie case; the balance convenience does not lean in his favour and he would not suffer any irreparable loss in the event of refusal of the prayer for temporary injunction.

5. The appellant in his plaint has pleaded that being in need of some money he had approached the respondent to pay a sum of Rs.5,000/- and had approached to take the land on mortgage. When ultimately the defendant agreed to pay a sum of Rs.3,000/- on 09.09.1988 the parties entered upon an agreement in respect of the transaction i. e. mortgage of suit land. It is not indicated as to whether such agreement was a written one or not. According to the case of the appellant is that on the same day mortgage deed was prepared as per the agreed condition and instructions but now he is astonished to see that in stead of a deed of mortgage a deed of sale has been created. This transaction admittedly has taken place in the year, 1988 and is called in question in the year, 2010. In para-13 of memo of appeal the appellant states that in the year, 2001 he had once approached the respondent to revoke the mortgage deed and thereafter several times approached the respondent which did not yield any fruitful result. On the face of the registered sale deed standing in favour of the respondent which is a notice to all concerned and till

the issue as raised by the appellant is decided a prima facie presumption would certainly continue to whole field in favour of deed of sale. Simply the pleading of the appellant that it was a deed of mortgage can not at this stage dislodge such legal presumption. Therefore, the appellant can not be said to having a prima facie case for the purpose of grant of injunction as prayed for. Moreover when at his instance the Court had passed an order of status quo, the document filed in course of hearing in the court below clearly shows that he himself has sold a part of the suit land by executing registered sale deed which is not denied to be in violation of the order which is a conduct wholly running against the appellant for his entitlement to such discretionary relief. Thus although for different reasons as discussed above, I am led to confirm the ultimate result of the court below by dismissing the petition U/o-39, Rule 1 & 2 C. P.C read with Sec. 151, C.P.C filed by appellant.

In the wake of aforesaid, the appeal stands dismissed and in the circumstances without cost.

District Judge, Khurda  
at Bhubaneswar  
15.11.2012.

Dictated and corrected by me and pronounced in the open Court this day the 15<sup>th</sup> day of November, 2012.

District Judge, Khurda  
at Bhubaneswar  
15.11.2012.

IN THE COURT OF THE DISTRICT JUDGE, KHURDA AT  
BHUBANESWAR.

Present:

Shri D. Dash,  
District Judge, Khurda  
at Bhubaneswar.

Dated, Bhubaneswar the 15<sup>th</sup> day of November, 2012.

F.A.O. 46 of 2010

[ Arising out of the order, dated 17.09.2009 passed by the learned Civil Judge ( Jr. Division), Bhubaneswar in I.A. No.236 of 2008]

1. Dayan Khan, age- 52, S/o- Late Dilbur Khan,
2. Nawab Khan, age-57, S/o- Late Adil Khan,  
Both are of Padanpada, P.O. Nariso, P.S- Balipatana, Dist  
Khurda,
3. Manguli Mallick, age- 62 years,

4. Akrura Mallick, age- 56 years,
5. Sadie Mallick, age- 50 years,
6. Dinabandhu Mallick, age- 42 years,  
Sl. No. 3 to 6 are son of Late Nata Mallick, Vill-  
Srirampur, P.O. - Nariso, P.S- Balipatana, Dist- Khurda.
8. Chakradhar Behera, age- 62, S/o- Late Bancha Behera,  
at- Padan Pada, PO- Nariso, P.S- Balipatana,

Dist- Khurda.

..... Appellants.

Versus-

1. Radhakanta Thakur, Situated inside Sri Brajabasi Math @  
Sri Radhakanta Moth, At/Po- Nuagaon, P.S- Niali,  
Dist- Cuttack. Represented by Mohant Sri Madan  
Mohan Das, aged about - 44 years, Guru Late  
Mohant Krushan Chandra Das, hereditary trustee of the  
institution at the above address.
2. Bankanidhi Swain, age-- 44, S/o- Shri Rasananda Swain,  
At-Srirampur, PO-Nariso, P.S-Balianta, Dist-Khurda.

..... Respondents.

Counsel :

For the appellant                      Shri B.C Mallick and his assts.  
For the Respondent                      Shri R.K. Routray.

Date of argument                      :            07.11.2012  
Date of judgment                        :            15.11.2012.

### JUDGEMENT

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Being aggrieved by an order dtd. 17.09.2009 passed by the Civil Judge (Jr. Division), Bhubaneswar in I.A. 236 of 2008, arising out of C.S. No. 167 of 2007 this appeal has been filed in the matter of a petition under order 39 Rule 1 & 2 read with section 151, Cr. P. C. filed by the appellants. By this order learned Civil Judge (Jr. Division), Bhubaneswar has allowed the petition filed by the respondent having having temporarily restrained from

entering upon the suit land and creating any disturbance in the possession of the respondent.

2. Facts necessary for disposal of the appeal are as under:-

The Respondent as plaintiff has filed the suit for permanent injunction and other reliefs wherein the appellants are the defendants. The suit is in relation to the land corresponding to Sabik Plot No. 6 as per the settlement record of rights of the year, 1920 and it was under Nijadakhil status belong to the respondent. It is stated that vesting upon the estate for some reason or other the land could not be settled in favour of the respondent and it went to be recorded under Benami Bandobasta in the name of the state as Abadajogya. However, the note of the possession of the respondent found place. It is claim that respondent remain in possession despite this recording and it is now in possession of the respondent through Mahanta Madan Mohan Das who is the hereditary trustee of the respondent deity. There was a challenge to the recording by the Asst. Consolidation Officer at the behest of the respondent by way of revision U/s.37(2) of OCH & PFL act before the Director Consolidation which is pending for adjudication. In the mean time, state has initiated encroachment cases against the respondent who has obtained the receipts thereof. It is ascertained that the appellant having no manner of right, title and interest over the suit land taking advantage of this recording by forming a group wanted to create disturbance over the possession of the respondent.

3. The Respondent's case is that the appellant have no title and possession over the suit land and until the same is decided or declared by the court of law there can not be a claim at their behest to restrain the appellant who are no physical possession over the suit land. It is also their case that the land with bushes and trees here and there and they are in cultivating

possession having reclaimed the same.

4           The Court below having considered the documents filed on behalf of the respondent and weighing the case and counter case of the parties and other attending circumstances as they emanate has found a prima facie case in favour of the respondent followed by the finding that the balance of convenience for the purpose of grant of injunction restraining the appellant from interfering in the possession of the respondent leans in favour of the respondent and in the absence of any order of restraint they would suffer irreparable injury so far as the occupation of the suit land is concerned. At the satisfaction as above, the order has been passed which has been impugned in this appeal.

5.           Learned counsel for the appellants submits that the land at present can not be said to be belonging to the respondent as it is recorded in the name of the state and as the appellants are in physical possession over the same there remains no reason to say that the respondent has prima facie case and so also other ingredients of balance of convenience and irreparable loss do not arise in favour of grant of injunction as ordered

Learned counsel for the respondent in supporting the views taken by the court below has further urged that the documents shows the possession of the respondent and recording is still under challenge before the competent court of law and when admittedly the record show ownership in favour of the respondent the order passed by the Court below is not liable to be interfered with.

6.           Hearing the aforesaid case of the respective parties as well as submission of the learned counsel appearing on their behalf let me now proceed to examine as to whether the satisfaction arrived by the court below are well

founded or not.

Undisputedly, the land at present stands recorded in the government khata and this recording is under challenge before the Director Consolidation. The record of right of 1928 settlement discloses that under Sabik Khata No.39, Plot No.6 the land measuring Ac.8.48 decimals stood in the name of the respondent deity under Nizdakhala status and the land register prepared by the consolidation authority also indicate the name of the respondent. The L.R Plot No.1023 as recorded in the land register by the consolidation authority is the land which has been recorded under hall plot No.765 remaining the same under hall Khata No.908. The initiation of the encroachment cases against the respondent also supports the case of possession in such state affair of the claim of the respondent that the for some reason or other the land could not be settle after the vesting operation. Although it is stated by the appellant that these encroachment cases are for the purpose of creation of evidence of possession, I agree with the view of the Court below that this is not proper stage to decide the same. All these documents prima facie tent to show the possession of the suit land to have been with the respondent. The appellants without filing of scrap of paper by mere assertions can not succeed to over turn and their effect. Thus I am agree with the view taken by the Court below that the respondent has show a better case of possession over the suit land than the O. Ps. Admittedly, there the respondent is not raising any allegation against the state but if the allegations are direction against the appellant that taking above of such recording of the land in the name of the state with a view they are in a mood to unnecessary create disturbance. In view of the specific stand of the respondent that they are in possession without stating any basis and it is a fit case that pending final determination of the title of the respondent by the competent authority

their possession needs to be protected against those who have no better right. The Court below therefore, in my humble view has not committed any error either in fact or in law in passing the impugned order restraining and also holding that the balance of convenience for grant of temporary injunction as prayed for leans in favour of the respondent and in the absence of that order of protection they would suffer irreparable injury. In view of that the order of Court below is not liable to be interfered with and is hereby confirmed.

In view of the aforesaid discussion, the appeal stands dismissed and in the circumstances without cost.

District Judge, Khurda  
at Bhubaneswar  
15.11.2012.

Dictated and corrected by me and pronounced in the open Court this day the 15th day of November, 2012.

District Judge, Khurda  
at Bhubaneswar  
15.11.2012.

IN THE COURT OF THE DISTRICT JUDGE, KHURDA AT  
BHUBANESWAR.

Present:

Shri D. Dash,  
District Judge, Khurda  
at Bhubaneswar.

Dated, Bhubaneswar the 15th day of November, 2012.

F.A.O. 47 of 2012

[ Arising out of the order, dated 14.03.2012 passed by the learned Civil Judge ( Jr. Division), Bhubaneswar in I.A. No.152 of 201 corresponding to C.S. No. 1562/2010]

Mohan Pradhan, aged about 43 years, S/o- Late Nrusingha Pradhana of Vill- Basantapedi, PO- Balakati, P.S- Baliana, Dist - Khurda. ....Appellant

Versus-

Gouranga Charan Dash, aged about - 54 years, S/o- Late Batakrushna Dash, At- Pratapsasan, Mala, PO- Balakati, P.S- Baliana, Dist - Khurda. ....Respondent.

Counsel :

For the appellant                      Shri H.S. Pati and his assts.

For the Respondent                      Shri R. C. Sadangi and his assts.

Date of argument                      :            15.11.2012

Date of judgment                        :            15.11.2012.

JUDGEMENT

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This appeal has been preferred challenging an order dtd. 14.03.2012 passed by the learned Civil Judge ( Jr. Division ) in I.A. No.152 of

2011 arising out of C. S. No.562 of 2010 in the matter of a petition under order 39, Rule - 1 & 2 read with 115, C.P.C by which the said petition filed by the appellant has been dismissed.

2. Facts necessary for disposal of this appeal are as under:-

The suit land in the plaint is said to be a purchased land of the appellant according to his case and it was purchased from one Balaram Mohanty and then mutated in his favour. But thereafter, he had mortgaged the land with the respondent when he was in need of some money. The mortgaged money being offered later, the respondent did not accept the same and on enquiry it was ascertained that in stead of a mortgage deed, the respondent has created a sale deed in his favour and accordingly has made further progress by getting it mutated.

The respondent in his objection while denying the factum of creation of any deed of mortgage claims to have purchased the land under that sale deed and according to him it is a story created for the purpose after lapse of 22 years.

3. Learned counsel for the appellant submits that in view of the pleadings of the parties it is required to be decided in the suit as to whether the deeds in question are purpose of mortgage or sale. It is his submission that in the facts and circumstances the balance of convenience leans in favour of an order of an interim injunction as prayed for and in the absence of that it is appellant who would suffer irreparable loss. By supporting the order of the Court below and further submit that even on the admitted facts and circumstances of the case it is not a fit case where the appellant can be held entitle to get the relief of the temporary injunction during pendency of the suit.

4. Perusal of the order impugned in this appeal reveals the court

below by taking cognizance of the fact that the appellant has sold plot No.3457 under Khata No.1200 measuring Ac.0.15 decimals which is one of out of the two suit plots to one Dillip Kalia when the order of status quo was in force has found him is not entitled to this discretionary relief saying that he has no prima facie case; the balance convenience does not leans in his favour and he would suffer any irreparable loss in the event of prayer for for temporary injunction.

5. The appellant in his plaint has pleaded that being need of some money he had approached the respondent to pay a sum of Rs.5,000/- and had approached to take the land on mortgage. When ultimately the defendant agreed to pay a sum of Rs.3,000/- on 09.09.1988 the parties entered upon an agreement in respect of the transaction and mortgage of suit land. It is indicated as to whether such agreement was a written one or not. According to the case of the appellant on the same day mortgage deed was prepared as per the agreed condition and instructions but now he is astonish that in stead of a deed of mortgage a deed of sale. This transaction admittedly to have taken place in the year, 1988 is called in question in the year, 2010. In para-13 the appellant states that in the year, 2001 he had once approach the respondent to revoke the mortgage deed and thereafter several times approached the respondent which did not yield any fruitful result. On the face of registered sale deed standing in favour of the respondent which is a notice to all concern and till the issue as raised by the appellant is decided a prima facie presumption would certainly continue to whole field. Simply pleading of the appellant that it was a deed of mortgage can not at this stage dislodge such presumption. Therefore, the appellant can not said to have a prima facie case for the purpose of grant of injunction as prayed for. More so at his instance the Court had pass an order of status quo. The document filed in course of hearing

in the court below clearly shows that he himself has sold a part of the suit land by executing registered sale deed which is a conduct wholly running against the appellant for his entitlement of such relief.

In view of the aforesaid discussion, the appeal stands dismissed and in the circumstances without cost.

District Judge, Khurda  
at Bhubaneswar  
15.11.2012.

Dictated and corrected by me and pronounced in the open Court this day the 15<sup>th</sup> day of November, 2012.

District Judge, Khurda  
at Bhubaneswar

IN THE COURT OF THE DISTRICT JUDGE, KHURDA AT  
BHUBANESWAR.

Present:

Shri D. Dash,  
District Judge, Khurda  
at Bhubaneswar.

Dated, Bhubaneswar the 15<sup>th</sup> day of November, 2012.

F.A.O. 47 of 2012

[ Arising out of the order, dated 14.03.2012 passed by the learned Civil Judge ( Jr. Division), Bhubaneswar in I.A. No.152 of 201 corresponding to C.S. No. 1562/2010]

Mohan Pradhan, aged about 43 years, S/o- Late Nrusingha Pradhana of Vill- Basantapedi, PO-Balakati, P.S- Baliana, Dist - Khurda. ....Appellant

Versus-

Gouranga Charan Dash, aged about - 54 years, S/o- Late Batakrushna Dash, At- Pratapsasan, Mala, PO- Balakati, P.S-Baliana, Dist - Khurda.

. ....Respondent.

Counsel :

For the appellant                      Shri H.S. Pati and his assts.

For the Respondent                      Shri R. C. Sadangi and his assts.

Date of argument                      :            15.11.2012

Date of judgment                      :            15.11.2012.

JUDGEMENT

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This appeal has been preferred challenging an order dtd. 14.03.2012 passed by the learned Civil Judge ( Jr. Division ) in I.A. No.152 of 2011 arising out of C. S. No.562 of 2010 in the matter of a petition under order 39, Rule - 1 & 2 read with 115, C.P.C by which the said petition filed by the appellant has been dismissed.

2.                      Facts necessary for disposal of this appeal are as under:-

The suit land in the plaint is said to be a purchased land of the appellant according to his case and it was purchased from one Balaram Mohanty and then mutated in his favour. But thereafter, he had mortgaged the land with the respondent when he was in need of some money. The mortgaged money being offered later, the respondent did not accept the same and on enquiry it was ascertained that in stead of a mortgage deed, the respondent has created a sale deed in his favour and accordingly has made further progress by getting it mutated.

The respondent in his objection while denying the factum of creation of any deed of mortgage claims to have purchased the land under that sale deed and according to him it is a story created for the purpose after lapse of 22 years.

3.                      Learned counsel for the appellant submits that in view of the pleadings of the parties it is required to be decided in the suit as to whether

the deeds in question are purpose of mortgage or sale. It is his submission that in the facts and circumstances the balance of convenience leans in favour of an order of an interim injunction as prayed for and in the absence of that it is appellant who would suffer irreparable loss. By supporting the order of the Court below and further submit that even on the admitted facts and circumstances of the case it is not a fit case where the appellant can be held entitle to get the relief of the temporary injunction during pendency of the suit.

4. Perusal of the order impugned in this appeal reveals the court below by taking cognizance of the fact that the appellant has sold plot No.3457 under Khata No.1200 measuring Ac.0.15 decimals which is one of out of the two suit plots to one Dillip Kalia when the order of status quo was in force has found him is not entitled to this discretionary relief saying that he has no prima facie case; the balance convenience does not leans in his favour and he would suffer any irreparable loss in the event of prayer for for temporary injunction.

5. The appellant in his plaint has pleaded that being need of some money he had approached the respondent to pay a sum of Rs.5,000/- and had approached to take the land on mortgage. When ultimately the defendant agreed to pay a sum of Rs.3,000/- on 09.09.1988 the parties entered upon an agreement in respect of the transaction and mortgage of suit land. It is indicated as to whether such agreement was a written one or not. According to the case of the appellant on the same day mortgage deed was prepared as per the agreed condition and instructions but now he is astonish that in stead of a deed of mortgage a deed of sale. This transaction admittedly to have taken place in the year, 1988 is called in question in the year, 2010. In para-13 the appellant states that in the year, 2001 he had once approach the

respondent to revoke the mortgage deed and thereafter several times approached the respondent which did not yield any fruitful result. On the face of registered sale deed standing in favour of the respondent which is a notice to all concern and till the issue as raised by the appellant is decided a prima facie presumption would certainly continue to whole field. Simply pleading of the appellant that it was a deed of mortgage can not at this stage dislodge such presumption. Therefore, the appellant can not said to have a prima facie case for the purpose of grant of injunction as prayed for. More so at his instance the Court had pass an order of status quo. The document filed in course of hearing in the court below clearly shows that he himself has sold a part of the suit land by executing registered sale deed which is a conduct wholly running against the appellant for his entitlement of such relief.

In view of the aforesaid discussion, the appeal stands dismissed and in the circumstances without cost.

District Judge, Khurda  
at Bhubaneswar  
15.11.2012.

Dictated and corrected by me and pronounced in the open Court this day the 15<sup>th</sup> day of November, 2012.

District Judge, Khurda  
at Bhubaneswar

IN THE COURT OF THE DISTRICT JUDGE, KHURDA AT  
BHUBANESWAR.

Present:

Shri D. Dash,  
District Judge, Khurda  
at Bhubaneswar.

Dated, Bhubaneswar the 8<sup>th</sup> day of November, 2012.

F.A.O. 07 of 2007

[ Arising out of the order, dated 17.12.2011 passed by the learned Civil

Judge ( Jr. Division), Bhubaneswar in I.A. No.461 of 2011]

M/s. Rabindra Life Line Pvt. Ltd., Having Regd. Office at Plot No. 6, Kharvela Nagar, Unit-3, P.S- Kharvela Nagar, Bhubaneswar, Dist - Khurda. Represented through its Managing Director Sri Sailendra Narayan Senapati, aged about 58 years, S/o- Late Madan Mohan Senapati.

..... Appellant.

Versus-

Paramananda Panda, age- 76 years, S/o- Late Dibakar Panda, Resident of Plot No. 1879/1890, Chintamaniswar Temple area, P.O- Budheswari, P.S- laxmisagar, Bhubaneswar, Dist - Khurda.

..... Respondent.

Counsel :

For the appellant                      Shri S.N. Das Das and his assts.  
For the Respondent                      Shri G. Rahman and his assts.

Date of argument                      :            18.10.2012  
Date of judgment                        :            08.11.2012.

### JUDGEMENT

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Being aggrieved by an order dtd. 17.12.2011 passed by the Civil Judge (Jr. Division), Bhubaneswar in I.A. 461 of 2011 this appeal has been filed in the matter of a petition under order 39 Rule 1 & 2 read with section 151, Cr. P. C. by the unsuccessful O.P. therein challenging the order of restrain passed against him and his henchmen from demolishing the Northern side boundary wall of the respondent standing over the suit land.

2. Facts necessary for disposal of the appeal are as under:-

The Respondent with his brother purchased land measuring

Ac.0.281 decimals out of Sabik plot No. 2018 in total measuring Ac.0.791 decimals under Khata No.836 from Makadam Kailash Chandra Badu Mohapatra by registered sale deed of the year, 1965. It is also his case that as per the land described there in the sale deed with specific boundary, he remained in possession of the same. The Respondent along with his brother again purchased Ac.0.045 decimals of land under Plot No.2019 of Khata No.1213 from one Debaki Dibya by registered sale deed. It is their case that by amalgamating the above lands they continue to possess by giving boundary wall on all three sides except the Southern side where there was green fence. The respondent claims to have got the entire land in his share in a amicable family settlement and according to him he is now residing there by constructing house. The dispute as per the plaint case arose when the appellant having no right, title and interest over the Plot No.1890 stacked a claim on a portion of the same for its use as road and then attempted to demolish the boundary wall of the respondent after getting a proceeding U/s.144, Cr. P C. initiated. It is the case of the respondent that the defendant is claiming a road over that plot of 1890 who has no basis and it is just his imagination to serve his purpose. By an unilateral act by showing a patch of land under Plot No. 1890 as road in his sale deed in favour of the appellant, such a false claim is made.

3. The appellant's case is that such portion of land was being used as road leading from the main road to the land that he purchased and that in due course of time has assumed the character as that of a public road. It is stated that the respondent has no prima facie case for the purpose of interim relief and the balance of convenience in stead of leaning in favour of the respondent, leans in favour of the appellant, who would suffer irreparable loss in the event the order of restraint remains in force as they would be deprived

of enjoining their own property properly.

4. Learned counsel for the appellant submits that when in the sale deed favour of the appellant the existence of the said road has been indicated and when that road is leading to the purchased land from the main road, the Court below ought to have given due weightage to the same and ought not to have passed an order of total restraint. It is also his submission that in the plan that the respondent has submitted before the B.D.A they have left that portion of land as road as the set-back area and therefore such an order of restraint closing user of that part of plot No.1890 as road is uncalled for and the court below erred in finding the existence of a prima face case in favour of the respondent so far as the interim relief claimed by him. The other considerations of balance of convenience and irreparable loss also do not stand in favour of the respondent in the facts and circumstances of the case. Learned counsel for the respondent counters said submission by supporting the order of the Court below and according to him when there is no road in the revenue map and any other document, the appellant can not take the advantage of the same being indicated in their own sale deed and the road in the building plan at this stage can't stand for consideration till the appellants claim of road not finally decided.

5. On careful reading of the order of the Court below, it is found that banking upon the registered sale deeds and other documents in favour of the respondent the Court below has come to a conclusion that he has a prima facie case and then in absence of any document being filed from the side of the appellant to substantiate their claim of user of said patch of land under plot No. 1890 as road, it has been held that the balance of convenience leans in favour of the respondent who would be suffer irreparable loss in the event of no order of restraint is passed against the appellant from demolishing the

boundary wall. In course of hearing of the appeal the appellants have filed number of documents and most importantly reference is made to the purposed building plan said to have been submitted by the respondent to the B.D.A.

6. Admittedly, the land under Plot No. 1890 cover under the registered sale deed stands in favour of the respondent. The appellant claims on a portion of the same being used as road in order to have access to his purchased land which is disputed by the respondent. The record of right and the revenue map stands without indication of any road on any portion of the said land which go against said claim of appellants. The appellants for the purpose bank upon the description of the road in his own sale deed and a purposed building plan said to have been submitted by the respondent before the B.D.A. The appellants at present do not dispute the fact that the land under Khata No. 1890 belongs to the plaintiff as indicated in the memo of appeal at para-4 towards the end. Thus, the presumption remains that the owner is in possession of the same which is a rebuttable on adduction of sufficient evidence in support of any claim contrary to it over the same or any claim of that nature detrimental to the interest of the owner as in this case. So in the trial the vital issue would be as to whether a portion of the land under Plot No.1890 being used since long as road for the purpose of ingress and egress to the land claimed to have been purchased by the appellant. The appellant claims to have using the said Northern side land for his ingress and egress since the time of his vender from the year 1965 and also he has staked a claim of right of easement of way for it's user as road for more than statutory period since the time of his vendors vendor without any objection from any quarter. The appellant does not dispute that the land has been encompassed with by the boundary wall. It is also not the case of the appellant that he has any construction over his own purchased land. Therefore, simply

**-:100:-**

considering the description of the road in the purposed building plan the said have been submitted by the respondent before the B.D. A it can not be said that the respondent has no prima facie case at least for protection of the land as it now stands. In the facts and circumstances of the case the balance of convenience therefore, leans in favour of protection of the present status of the land and as it now exists which would also take care of the claim of the appellant. In the facts and circumstances of the case, I am also of the humble view that the non protection of the status of the land would cause irreparable loss to the respondent as in the event of his success there is every likelihood of his not being able to use the same as he wants and thus of being deprived and his also becoming infructuous. I, therefore, find that the ultimate order of the Court below is just and proper although for different reasons as discussed above.

In view of the aforesaid discussion, the appeal stands dismissed and in the circumstances without cost.

District Judge, Khurda  
at Bhubaneswar  
08.11.2012.

Dictated and corrected by me and pronounced in the open Court this day the 0<sup>8th</sup> day of November, 2012.

District Judge, Khurda  
at Bhubaneswar  
08.11.2012.

IN THE COURT OF THE DISTRICT JUDGE, KHURDA AT  
BHUBANESWAR.

Present:

Shri D. Dash,  
District Judge, Khurda  
at Bhubaneswar.

Dated, Bhubaneswar the 15th day of November, 2012.

F.A.O. 47 of 2012

[ Arising out of the order, dated 14.03.2012 passed by the learned Civil Judge ( Jr. Division), Bhubaneswar in I.A. No.152 of 201 corresponding to C.S. No. 1562/2010]

Mohan Pradhan, aged about 43 years, S/o- Late Nrusingha Pradhana of Vill- Basantapedi, PO-Balakati, P.S- Baliana, Dist - Khurda. ....Appellant

Versus-

Gouranga Charan Dash, aged about - 54 years, S/o- Late Batakrushna Dash, At- Pratapsasan, Mala, PO- Balakati, P.S-Baliana, Dist - Khurda. ....Respondent.

Counsel :

For the appellant

Shri H.S. Pati and his assts.

For the Respondent                      Shri R. C. Sadangi and his assts.

Date of argument                      :            15.11.2012  
Date of judgment                      :            15.11.2012.

JUDGEMENT

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This appeal has been preferred challenging an order dtd. 14.03.2012 passed by the learned Civil Judge ( Jr. Division ) in I.A. No.152 of 2011 arising out of C. S. No.562 of 2010 in the matter of a petition under order 39, Rule - 1 & 2 read with 115, C.P.C by which the said petition filed by the appellant has been dismissed.

2.                      Facts necessary for disposal of this appeal are as under:-

The suit land in the plaint is said to be a purchased land of the appellant according to his case and it was purchased from one Balaram Mohanty and then mutated in his favour. But thereafter, he had mortgaged the land with the respondent when he was in need of some money. The mortgaged money being offered later, the respondent did not accept the same and on enquiry it was ascertained that in stead of a mortgage deed, the respondent has created a sale deed in his favour and accordingly has made further progress by getting it mutated.

The respondent in his objection while denying the factum of creation of any deed of mortgage claims to have purchased the land under that sale deed and according to him it is a story created for the purpose after lapse of 22 years.

3.                      Learned counsel for the appellant submits that in view of the pleadings of the parties it is required to be decided in the suit as to whether the deeds in question are purpose of mortgage or sale. It is his submission

that in the facts and circumstances the balance of convenience leans in favour of an order of an interim injunction as prayed for and in the absence of that it is appellant who would suffer irreparable loss. By supporting the order of the Court below and further submit that even on the admitted facts and circumstances of the case it is not a fit case where the appellant can be held entitle to get the relief of the temporary injunction during pendency of the suit.

4. Perusal of the order impugned in this appeal reveals the court below by taking cognizance of the fact that the appellant has sold plot No.3457 under Khata No.1200 measuring Ac.0.15 decimals which is one of out of the two suit plots to one Dillip Kalia when the order of status quo was in force has found him is not entitled to this discretionary relief saying that he has no prima facie case; the balance convenience does not leans in his favour and he would suffer any irreparable loss in the event of prayer for for temporary injunction.

5. The appellant in his plaint has pleaded that being need of some money he had approached the respondent to pay a sum of Rs.5,000/- and had approached to take the land on mortgage. When ultimately the defendant agreed to pay a sum of Rs.3,000/- on 09.09.1988 the parties entered upon an agreement in respect of the transaction and mortgage of suit land. It is indicated as to whether such agreement was a written one or not. According to the case of the appellant on the same day mortgage deed was prepared as per the agreed condition and instructions but now he is astonish that in stead of a deed of mortgage a deed of sale. This transaction admittedly to have taken place in the year, 1988 is called in question in the year, 2010. In para-13 the appellant states that in the year, 2001 he had once approach the respondent to revoke the mortgage deed and thereafter several times

-:104:-

approached the respondent which did not yield any fruitful result. On the face of registered sale deed standing in favour of the respondent which is a notice to all concern and till the issue as raised by the appellant is decided a prima facie presumption would certainly continue to whole field. Simply pleading of the appellant that it was a deed of mortgage can not at this stage dislodge such presumption. Therefore, the appellant can not said to have a prima facie case for the purpose of grant of injunction as prayed for. More so at his instance the Court had pass an order of status quo. The document filed in course of hearing in the court below clearly shows that he himself has sold a part of the suit land by executing registered sale deed which is a conduct wholly running against the appellant for his entitlement of such relief.

In view of the aforesaid discussion, the appeal stands dismissed and in the circumstances without cost.

District Judge, Khurda  
at Bhubaneswar  
15.11.2012.

Dictated and corrected by me and pronounced in the open Court this day the 15<sup>th</sup> day of November, 2012.

District Judge, Khurda  
at Bhubaneswar

IN THE COURT OF THE DISTRICT JUDGE, KHURDA AT  
BHUBANESWAR.

Present:

Shri D. Dash,  
District Judge, Khurda  
at Bhubaneswar.

Dated, Bhubaneswar the 01<sup>st</sup> day of November, 2012.

F.A.O. 95 of 2007

[ Arising out of the order, dated 17.09.2007 passed by the learned 2<sup>nd</sup> Addl.

Civil Judge ( Sr. Division), Bhubaneswar in C.M.A. No.4 of 2007  
corresponding to T.S. No. 163/312 of 2006/98]

1. Umakanta Mohanty, age-54, S/o- Late Golekha Bihari Mohanty,  
Presently residing at Plot No.129, V.I.P colony, IRC Village,  
Nayapalli, PO-IRC village, Dist - Khurda.
2. Dhanurdhar Champati Ray, age- 47, S/o- Late Braja Sundar  
Champati Ray, LIG-30, Nayapalli, P.S- Nayapalli, PO- Bhubaneswar-  
12, Dist - Khurda.

..... Appellants.

Versus-

Hrushikesh Sharma, age- 48 years, S/o- Chandramani Sharma, C.C. -158,  
Baramunda Housing Board Colony, Bhubaneswar-3, P.S-Khandagiri, Dist -  
Khurda.

..... Respondent.

Counsel :

For the appellant                      Shri H. N. Routray and his assts.

For the Respondent                      Shri Jagannath Das and his assts.

Date of argument                      :            17.10.2012  
Date of judgment                        :            01.11.2012.

JUDGEMENT

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This appeal has been directed against an order dtd. 17.09.2007  
passed by 2<sup>nd</sup> Addl. Civil Judge ( Sr. Division), Bhubaneswar in C.M.A No. 4/  
2007, arising out of T.S No. 163/312 of 2006/98 in the matter of an  
application under order 9, Rule 13 C.P.C which has been dismissed.

2. Facts necessary for disposal of this appeal are as under:-

Respondent had filed the above noted suit against the appellants  
claiming relief for recovery of possession of the suit land which was contested  
by the appellants by filing of written statement as well as counter claim.

On 19.12.2006, the record was received from the Court of Civil Judge ( Sr. Division), Bhubaneswar by the 2<sup>nd</sup> Addl. Civil Judge ( Sr. Division), Bhubaneswar which was put up on 22.12.2006 as earlier fixed. On 22.12.2006 when the respondent filed affidavit evidence, order was passed for sending the same to the appellants by the registered post fixing 02.01.2007 as return of postal acknowledgment. Notice was also issued to them on 02.01.2007. The postal acknowledgment was not received back. However, further evidence of respondent was taken by admitting the documents filed on his behalf in evidence. On 05.01.2007 the postal acknowledgment came back after due service but none appeared on behalf of the appellants hence, the matter proceeded as per in absence of the appellants and ultimately judgment in decree followed. Thereafter, the appellants filed the petition under order 9, Rule 13 C.P.C for setting aside the ex parte judgment and decree which having been dismissed the present appeal has been filed.

3. Heard the learned counsel for the parties. Learned counsel for the appellants submitted that the Court below on proper appreciation of evidence on record lands for the purpose ought to have allowed the petition under order 9, Rule 13 C.P.C and reason assigned by the Court below for disbelieving the evidence of the Appellant No.2 is flimsy and such an approach ought not to have been taken into the matter. It is his submission that this is a fit case where the judgment and decree passed against the appellant in the suit need be set aside. He also submits that in case the ex parte decree is set aside, the appellants would fully cooperate for the disposal of the suit within the time frame as would be fixed.

Learned counsel for the respondent on the other hand supports the order of the Court below in submitting that for good and cogent reasons the court below has discarded the ground of illness by the appellant No.2 for

the purpose of setting aside the judgment and decree passed *ex parte* in the suit. According to him it is respondent who was purposely resorting to such practices in order to protract the litigation since they are in enjoying all the property of the rightful owner and Respondent in this way is being deprived of the same.

4. Perused the order of the Court below. Appellant No.2 has been examined as P.W.1. It is his evidence that on 02.01.2007, he could not attend the court as he was running with fever from 30.12.2006 to 12.01. 2007 for which he could not inform his counsel to do the needful on 02.01.2007 and he being the only male member of the family no other could be contacted to do the needful. P. W.1 although states to have received the affidavit evidence on 22.12.2006 but admits to have not responded in any manner thereafter. The doctor who according to the evidence of P.W.1 was treating him has not been examined in this case in order to corroborate the evidence of P.W.1. The Court below in the above state of affair in evidence held that the appellants have failed to prove that they were prevented by sufficient cause from appearing on the date of hearing of the suit. The Court below has thus refused to accept P.W.1's evidence. P.W.1, the Appellant No.2 in his evidence states that since he was suffering from viral fever from 30.12.2006 to 12.01.2007, he could not attend the Court on 02.01.2007 and he also could not inform Appellant No.1 as his telephone was out of order. He has proved the medical certificate Ext.1 and his signature therein Ext.1/6. In view of such evidence, P.W. 2, the Appellant No. 1 remaining silent about illness of P.W.1 is of no such significance. It's common experience that many a times patients do not even go for medical treatments in such type of illness and in that event lack of medical evidence or certificate is no ground to discard the factum of illness. Therefore, simply because in this case, the doctor concerned has not

been examined, the evidence of P.W.1 ought not to have been thrown aside. Moreover, as already stated because P.W.2 has not deposed about illness of P.W.1, it can not be said that evidence of P.W.1 and P.W. 2 suffer from discrepancy and inherent improbability as held by the Court below. The petitioners do not gain by remaining absent where their interest is likely to be affected by exparte adjudication. In such matters, the object is to do substantial justice to parties by disposing the matters on merit and the courts are required to adopt pragmatic and rational approach. In that view of the matter, I find the approach of the court below as too technical and thus not justice-oriented.

5. Therefore, I am led to accept the case of the petitioners that there was sufficient cause for their non-appearance on the date of hearing of the suit and by taking a justice oriented approach for determination of valuable rights of the parties in merit, set aside the order of the Court below.

In view of the aforesaid discussion, the appeal stands allowed and in the circumstances without cost. The order dtd. 17.09.2007 passed by learned 2<sup>nd</sup> Addl. Civil Judge (Sr. Division), Bhubaneswar in C.M.A. No.4/07 is hereby set aside and consequently the exparte judgment passed in T.S. No.163/312 of 2006/98 subject to payment of cost of Rs.1000/- ( Rupees one thousand only ) by the Appellants to the Respondent on or before 07.11.2012. The Court below is directed to proceed with the suit from the stage as it was on 02.01.2007 and dispose of the same in accordance with law by the end of January, 2013. The parties are hereby directed to appear before the court below on 07.11.2012 to receive further instruction and cooperate for disposal of the suit as above.

District Judge, Khurda  
at Bhubaneswar  
01.11.2012.

Dictated and corrected by me and pronounced in the open Court this day the 01<sup>st</sup> day of November, 2012.

District Judge, Khurda  
at Bhubaneswar  
01.11.2012.

IN THE COURT OF THE DISTRICT JUDGE, KHURDA AT  
BHUBANESWAR.

Present:

Shri D. Dash,  
District Judge, Khurda  
at Bhubaneswar.

Dated, Bhubaneswar the 15th day of November, 2012.

F.A.O. 47 of 2012

[ Arising out of the order, dated 14.03.2012 passed by the learned Civil Judge ( Jr. Division), Bhubaneswar in I.A. No.152 of 201 corresponding to C.S. No. 1562/2010]

Mohan Pradhan, aged about 43 years, S/o- Late Nrusingha Pradhana of Vill- Basantapedi, PO-Balakati, P.S- Baliana, Dist - Khurda. ....Appellant

Versus-

Gouranga Charan Dash, aged about - 54 years, S/o- Late Batakrushna Dash, At- Pratapsasan, Mala, PO- Balakati, P.S-Baliana, Dist - Khurda. ....Respondent.

Counsel :

For the appellant                      Shri H.S. Pati and his assts.

For the Respondent                      Shri R. C. Sadangi and his assts.

Date of argument                      :            15.11.2012

Date of judgment                        :            15.11.2012.

JUDGEMENT

This appeal has been preferred challenging an order dtd. 14.03.2012 passed by the learned Civil Judge ( Jr. Division ) in I.A. No.152 of 2011 arising out of C. S. No.562 of 2010 in the matter of a petition under order 39, Rule - 1 & 2 read with 115, C.P.C by which the said petition filed by the appellant has been dismissed.

2. Facts necessary for disposal of this appeal are as under:-

The suit land in the plaint is said to be a purchased land of the appellant according to his case and it was purchased from one Balaram Mohanty and then mutated in his favour. But thereafter, he had mortgaged the land with the respondent when he was in need of some money. The mortgaged money being offered later, the respondent did not accept the same and on enquiry it was ascertained that in stead of a mortgage deed, the respondent has created a sale deed in his favour and accordingly has made further progress by getting it mutated.

The respondent in his objection while denying the factum of creation of any deed of mortgage claims to have purchased the land under that sale deed and according to him it is a story created for the purpose after lapse of 22 years.

3. Learned counsel for the appellant submits that in view of the pleadings of the parties it is required to be decided in the suit as to whether the deeds in question are purpose of mortgage or sale. It is his submission that in the facts and circumstances the balance of convenience leans in favour of an order of an interim injunction as prayed for and in the absence of that it is appellant who would suffer irreparable loss. By supporting the order of the Court below and further submit that even on the admitted facts and circumstances of the case it is not a fit case where the appellant can be held

entitled to get the relief of the temporary injunction during pendency of the suit.

4. Perusal of the order impugned in this appeal reveals the court below by taking cognizance of the fact that the appellant has sold plot No.3457 under Khata No.1200 measuring Ac.0.15 decimals which is one of out of the two suit plots to one Dillip Kalia when the order of status quo was in force has found him is not entitled to this discretionary relief saying that he has no prima facie case; the balance convenience does not lean in his favour and he would suffer any irreparable loss in the event of prayer for temporary injunction.

5. The appellant in his plaint has pleaded that being in need of some money he had approached the respondent to pay a sum of Rs.5,000/- and had approached to take the land on mortgage. When ultimately the defendant agreed to pay a sum of Rs.3,000/- on 09.09.1988 the parties entered upon an agreement in respect of the transaction and mortgage of suit land. It is indicated as to whether such agreement was a written one or not. According to the case of the appellant on the same day mortgage deed was prepared as per the agreed condition and instructions but now he is astonished that in stead of a deed of mortgage a deed of sale. This transaction admittedly to have taken place in the year, 1988 is called in question in the year, 2010. In para-13 the appellant states that in the year, 2001 he had once approached the respondent to revoke the mortgage deed and thereafter several times approached the respondent which did not yield any fruitful result. On the face of registered sale deed standing in favour of the respondent which is a notice to all concerned and till the issue as raised by the appellant is decided a prima facie presumption would certainly continue to whole field. Simply pleading of the appellant that it was a deed of mortgage can not at this stage dislodge such

-:112:-

presumption. Therefore, the appellant can not said to have a prima facie case for the purpose of grant of injunction as prayed for. More so at his instance the Court had pass an order of status quo. The document filed in course of hearing in the court below clearly shows that he himself has sold a part of the suit land by executing registered sale deed which is a conduct wholly running against the appellant for his entitlement of such relief.

In view of the aforesaid discussion, the appeal stands dismissed and in the circumstances without cost.

District Judge, Khurda  
at Bhubaneswar  
15.11.2012.

Dictated and corrected by me and pronounced in the open Court this day the 15<sup>th</sup> day of November, 2012.

District Judge, Khurda  
at Bhubaneswar  
15.11.2012.

IN THE COURT OF THE DISTRICT JUDGE, KHURDA AT  
BHUBANESWAR.

Present:

Shri D. Dash,  
District Judge, Khurda  
at Bhubaneswar.  
Dated, Bhubaneswar the 01<sup>st</sup> day of November, 2012.

F.A.O. 95 of 2007

[ Arising out of the order, dated 17.09.2007 passed by the learned 2<sup>nd</sup> Addl. Civil Judge ( Sr. Division), Bhubaneswar in C.M.A. No.4 of 2007 corresponding to T.S. No. 163/312 of 2006/98]

1. Umakanta Mohanty, age-54, S/o- Late Golekha Bihari Mohanty, Presently residing at Plot No.129, V.I.P colony, IRC Village, Nayapalli, PO-IRC village, Dist - Khurda.
2. Dhanurdhar Champati Ray, age- 47, S/o- Late Braja Sundar

**-:113:-**

Champati Ray, LIG-30, Nayapalli, P.S- Nayapalli, PO- Bhubaneswar-12, Dist - Khurda.

..... Appellants.

Versus-

Hrushikesh Sharma, age- 48 years, S/o- Chandramani Sharma, C.C. -158, Baramunda Housing Board Colony, Bhubaneswar-3, P.S-Khandagiri, Dist - Khurda.

..... Respondent.

Counsel :

For the appellant	Shri Jagannath Das and his assts.
For the Respondent	Shri N. C. B. Jena and his assts.

Date of argument	:	17.10.2012
Date of judgment	:	01.11.2012.

JUDGEMENT

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This appeal has been directed against an order dtd. 17.09.2007 passed by 2<sup>nd</sup> Addl. Civil Judge ( Sr. Division), Bhubaneswar in C.M. No. 4/2007, arising out of T.S No. 163 of 312 of 2006/98 in the matter of an application under order 9, Rule 13 C.P.C which has been dismissed.

2. Facts necessary for disposal of this appeal are as under:-

Respondent had filed the above noted suit against the appellants claiming relief for recovery of possession of the suit land which was contested by the appellants by filing of written statement as well as counter claim.

On 19.12.2006, the record was received from the Court of Civil Judge ( Sr. Division), Bhubaneswar by the 2<sup>nd</sup> Addl. Civil Judge ( Sr. Division), Bhubaneswar which was put up on 22.12.2006 as earlier fixed. On 22.12.2006 when the respondent filed affidavit evidence, order was passed for sending the same to the appellants by the registered post fixing 02.01.2007 as return of postal acknowledgment. Notice was also issued to them on 02.01.2007. The

postal acknowledgment was not received back. However, further evidence of respondent was taken by admitting the documents filed on his behalf in evidence. On 05.01.2007 the postal acknowledgment came back after due service but none appeared on behalf of the appellants hence, the matter proceeded as per in absence of the appellants and ultimately judgment in decree followed. Thereafter, the appellants filed the petition under order 9, Rule 13 C.P.C for setting aside the exparte judgment and decree which having been dismissed the present appeal has been filed.

3. Heard the learned counsel for the parties. Learned counsel for the appellants submitted that the Court below on proper appreciation of evidence on record lands for the purpose ought to have allowed the petition under order 9, Rule 13 C.P.C and reason assign by the Court below for disbelieving the alienation of the Respondent No.2 is flimsy and such a right approach ought not to have been taken into the matter. It is his submission that this is a fit case where the judgment and decree passed against the appellant in the suit for setting aside the judgment and decree passed exparte against the appellant.

Learned counsel for the respondent on the other hand supports the order of the Court below in submitting that for good and cogent reasons the court below has discarded the ground of illness by the appellants for the purpose of setting aside the judgment and decree passed exparte in the suit. According to him it is respondent who was purposely resorting to such practices in order to protract the litigation since they are in enjoying all the property of the rightful owner. Respondent is in this way being deprived of the same.

4. Perused the order of the Court below. Respondent No.2 has been examined as P.W.1. It is his evidence that on 02.01.2007, he could

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not attend the court as he was running with fever from 30.12.2006 to 12.01.2007 for which he could not inform his counsel to do the needful on 02.01.2007 and he being the only male member of the family no other could be contacted to do the needful. P. W.1 again states that who have received the affidavit evidence on 22.12.2006 and admits to have not responded any manner thereafter. The doctor who according to the evidence of P.W.1 was treating him has not been examined in this case In order to corroborate the evidence of P.W.1. P.W. 2 is also silent about such illness. Therefore, the appellants in this case have failed to prove that they were prevented by sufficient cause from appearing on the date of hearing of the suit. The finding by the Court below is accordingly found to have been based on proper appreciation of evidence in this case.

In view of the aforesaid discussion, the appeal stands dismissed and in the circumstances without cost.

District Judge, Khurda  
at Bhubaneswar  
01.11.2012.

Dictated and corrected by me and pronounced in the open Court this day the 01<sup>st</sup> day of November, 2012.

District Judge, Khurda  
at Bhubaneswar  
01.11.2012.

IN THE COURT OF THE DISTRICT JUDGE, KHURDA AT  
BHUBANESWAR.

Present:

Shri D. Dash,  
District Judge, Khurda  
at Bhubaneswar.

-:116:-

Dated, Bhubaneswar the 8<sup>th</sup> day of November, 2012.

F.A.O. 07 of 2007

[ Arising out of the order, dated 17.12.2011 passed by the learned Civil Judge ( Jr. Division), Bhubaneswar in I.A. No.461 of 2011]

M/s. Rabindra Life Line Pvt. Ltd., Having Regd. Office at Plot No. 6, Kharvela Nagar, Unit-3, P.S- Kharvela Nagar, Bhubaneswar, Dist - Khurda. Represented through its Managing Director Sri Sailendra Narayan Senapati, aged about 58 years, S/o- Late Madan Mohan Senapati.

..... Appellant.

Versus-

Paramananda Panda, age- 76 years, S/o- Late Dibakar Panda, Resident of Plot No. 1879/1890, Chintamaniswar Temple area, P.O- Budheswari, P.S- laxmisagar, Bhubaneswar, Dist - Khurda.

..... Respondent.

Counsel :

For the appellant                      Shri S.N. Das Das and his assts.  
For the Respondent                      Shri G.Rahman and his assts.

Date of argument                      :            18.10.2012  
Date of judgement                      :            08.11.2012.

JUDGEMENT

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Being aggrieved by an order dtd. 17.12.2011 passed by the Civil Judge (Jr. Division), Bhubaneswar in I.A. 461 of 2011 this appeal has been filed in the matter of a petition under order 39 Rule 1 & 2 read with section 151, Cr. P. C. by the unsuccessful O.P. therein challenging the order of restrain passed against him and his henchmen from demolishing the

Northern side boundary wall of the respondent standing over the suit land.

2. Facts necessary for disposal of the appeal are as under:-

The Respondent with his brother purchased land measuring Ac.0.281 decimals out of Sabik plot No. 2018 in total measuring Ac.0.791 decimals under Khata No.836 from Makadam Kailash Chandra Badu Mohapatra by registered sale deed of the year, 1965. It is also his case that as per the land described therein in the sale deed with specific boundary, he remained in possession of the same. The Respondent along with his brother again purchased Ac.0.045 decimals of land under Plot No.2019 of Khata No.1213 from one Debaki Dibya by registered sale deed. It is their case that by amalgamating the above lands they continue to possess by giving boundary wall on all three sides except the Southern side where there was green fence. The respondent claims to have got the entire land in his share in a amicable family settlement and according to him he is now residing there by constructing house. The dispute as per plaint case arose when the appellant having no right, title and interest over the Plot No.1890 stacked a claim on a portion of the same for its user as road and then attempted to demolish the boundary wall of the respondent after getting a proceeding U/s.144, Cr. P C. initiated. It is the case of the respondent that the defendant is claiming a road over that plot of 1890 who has no basis and it is just his imagination to serve his purpose. By an unilateral act by showing a patch of land under Plot No. 1890 as road in his sale deed in favour of the appellant, such a false claim is made.

3. The appellant's case is that such portion of land was being used as road leading from the main road to the land that he purchased and that in due course of time has assured the character as that of a public road. It is stated that the respondent has no prima facie case for the purpose of interim

relief and the balance of convenience in stead of leaning in favour of the respondent, leans in favour of the appellant, who would suffer irreparable loss in the event the order of restraint remains in force as they would be deprived of enjoining their own property properly.

4. Learned counsel for the appellant submits that when in the sale deed favour of the appellant the existence of the said road has been indicated and when that the road is leading to the purchased land from the main road, the Court below ought to have given due weightage to the same and ought not to have passed an order of total restraint. It is also his submission that in the plan that the respondent has submitted before the B.D.A they have left that portion of land as road as the set-back area and therefore such an order of restraint closing user of that part of plot No.1890 as road is uncalled for and the court below erred in finding the existence of a prima face case in favour of the respondent so far as the interim relief claimed by him. The other considerations of balance of convenience and irreparable loss also do not stand in favour of the respondent in the facts and circumstances of the case. Learned counsel for the respondent counters said submission by supporting the order of the Court below and according to him when there is no road in the revenue map and any other document, the appellant can not take the advantage of the same being indicated in their own sale deed and the road in the building plan at this stage can't stand for consideration till the appellants claim of road not finally decided.

5. On careful reading of the order of the Court below, it is found that banking upon the registered sale deeds and other documents in favour of the respondent the Court below has come to a conclusion that he has a prima facie case and then in absence of any document being filed from the side of the appellant to substantiate their claim of user of said patch of land under

plot No. 1890 as road, it has been held that the balance of convenience leans in favour of the respondent who would be suffer irreparable loss in the event of no order of restraint is passed against the appellant from demolishing the boundary wall. In course of hearing of the appeal the appellants have filed number of documents and most importantly reference is made to the purposed building plan said to have been submitted by the respondent to the B.D.A.

6. Admittedly, the land under Plot No. 1890 cover under the registered sale deed stands in favour of the respondent. The appellant claims on a portion of the same being used as road in order to have access to his purchased land which is disputed by the respondent. The record of right and the revenue map stands without indication of any road on any portion of the said land which go against said claim of appellants. The appellants for the purpose bank upon the description of the road in his own sale deed and a purposed building plan said to have been submitted by the respondent before the B.D.A. The appellants at present do not dispute the fact that the land under Khata No. 1890 belongs to the plaintiff as indicated in the memo of appeal at para-4 towards the end. Thus, the presumption remains that the owner is in possession of the same which is a rebuttable on adduction of sufficient evidence in support of any claim contrary to it over the same or any claim of that nature detrimental to the interest of the owner as in this case. So in the trial the vital issue would be as to whether a portion of the land under Plot No.1890 being used since long as road for the purpose of ingress and egress to the land claimed to have been purchased by the appellant. The appellant claims to have using the said Northern side land for his ingress and egress since the time of his vender from the year 1965 and also he has staked a claim of right of easement of way for it's user as road for more than statutory period since the time of his vendors vendor without any objection

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from any quarter. The appellant does not dispute that the land has been encompassed with by the boundary wall. It is also not the case of the appellant that he has any construction over his own purchased land. Therefore, simply considering the description of the road in the purposed building plan the said have been submitted by the respondent before the B.D. A it can not be said that the respondent has no prima facie case at least for protection of the land as it now stands. In the facts and circumstances of the case the balance of convenience therefore, leans in favour of protection of the present status of the land and as it now exists which would also take care of the claim of the appellant. In the facts and circumstances of the case, I am also of the humble view that the non protection of the status of the land would cause irreparable loss to the respondent as in the event of his success there is every likelihood of his not being able to use the same as he wants and thus of being deprived and lis also becoming infructuous

I, therefore, find that the ultimate order of the Court below is just and proper although for different reasons as discussed above.

In view of the aforesaid discussion, the appeal stands dismissed and in the circumstances without cost.

District Judge, Khurda  
at Bhubaneswar  
08.11.2012.

Dictated and corrected by me and pronounced in the open Court this day the 0<sup>8th</sup> day of November, 2012.

District Judge, Khurda  
at Bhubaneswar  
08.11.2012.

IN THE COURT OF THE DISTRICT JUDGE, KHURDA AT  
BHUBANESWAR.

Present:

Shri D. Dash,  
District Judge, Khurda  
at Bhubaneswar.

Dated, Bhubaneswar the 01<sup>st</sup> day of November, 2012.

F.A.O. 95 of 2007

[ Arising out of the order, dated 17.09.2007 passed by the learned 2<sup>nd</sup> Addl. Civil Judge ( Sr. Division), Bhubaneswar in C.M.A. No.4 of 2007 corresponding to T.S. No. 163/312 of 2006/98]

1. Umakanta Mohanty, age-54, S/o- Late Golekha Bihari Mohanty, Presently residing at Plot No.129, V.I.P colony, IRC Village, Nayapalli, PO-IRC village, Dist - Khurda.
2. Dhanurdhar Champati Ray, age- 47, S/o- Late Braja Sundar Champati Ray, LIG-30, Nayapalli, P.S- Nayapalli, PO- Bhubaneswar-12, Dist - Khurda.

..... Appellants.

Versus-

Hrushikesh Sharma, age- 48 years, S/o- Chandramani Sharma, C.C. -158, Baramunda Housing Board Colony, Bhubaneswar-3, P.S-Khandagiri, Dist - Khurda.

..... Respondent.

Counsel :

For the appellant                      Shri Jagannath Das and his assts.  
For the Respondent                      Shri N.C.B. Jena and his assts.

Date of argument        :        17.10.2012  
Date of judgement        :        01.11.2012.

JUDGEMENT

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This appeal has been directed against an order dtd. 17.09.2007 passed by 2<sup>nd</sup> Addl. Civil Judge ( Sr. Division), Bhubaneswar in C.M. No. 4/2007, arising out of T.S No. 163 of 312 of 2006/98 in the matter of an application under order 9, Rule 13 C.P.C which has been dismissed.

2. Facts necessary for disposal of this appeal are as under:-

Respondent had filed the above noted suit against the appellants claiming relief for recovery of possession of the suit land which was contested by the appellants by filing of written statement as well as counter claim.

On 19.12.2006, the record was received from the Court of Civil Judge ( Sr. Division), Bhubaneswar by the 2<sup>nd</sup> Addl. Civil Judge ( Sr. Division), Bhubaneswar which was put up on 22.12.2006 as earlier fixed. On 22.12.2006 when the respondent filed affidavit evidence, order was passed for sending the same to the appellants by the registered post fixing 02.01.2007 as return of postal acknowledgment. Notice was also issued to them on 02.01.2007. The

postal acknowledgment was not received back. However, further evidence of respondent was taken by admitting the documents filed on his behalf in evidence. On 05.01.2007 the postal acknowledgment came back after due service but none appeared on behalf of the appellants hence, the matter proceeded as per in absence of the appellants and ultimately judgment in decree followed. Thereafter, the appellants filed the petition under order 9, Rule 13 C.P.C for setting aside the exparte judgment and decree which having been dismissed the present appeal has been filed.

3. Heard the learned counsel for the parties. Learned counsel for the appellants submitted that the Court below on proper appreciation of evidence on record lands for the purpose ought to have allowed the petition under order 9, Rule 13 C.P.C and reason assign by the Court below for disbelieving the alienation of the Respondent No.2 is flimsy and such a right approach ought not to have been taken into the matter. It is his submission that this is a fit case where the judgment and decree passed against the appellant in the suit for setting aside the judgment and decree passed exparte against the appellant.

Learned counsel for the respondent on the other hand supports the order of the Court below in submitting that for good and cogent reasons the court below has discarded the ground of illness by the appellants for the purpose of setting aside the judgment and decree passed exparte in the suit. According to him it is respondent which was purposely resorting to such practices in order to protract the litigation since they are in enjoying all the property of the rightful owner. Respondent is in this way being deprived of the same.

4. Perused the order of the Court below. Respondent No.2 has been examined as P.W.1. It is his evidence that on 02.01.2007, he could

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not attend the court as he was running with fever from 30.12.2006 to 12.01.2007 for which he could not inform his counsel to do the needful on 02.01.2007 and he being the only male member of the family no other could be contacted to do the needful. P. W.1 again states that who have received the affidavit evidence on 22.12.2006 and admits to have not responded any manner thereafter. The doctor who according to the evidence of P.W.1 was treating him has not been examined in this case. In order to corroborate the evidence of P.W.1 was treating him has not been examined in this case in order to corroborate the evidence of P.W.1. P.W. 2 is also silent about such illness. Therefore, the appellants in this case have failed to prove that they were prevented by sufficient cause from appearing on the date of hearing of the suit. The finding by the Court below is accordingly found to have been based on proper appreciation of evidence in this case.

In view of the aforesaid discussion, the appeal stands dismissed and in the circumstances without cost.

District Judge, Khurda  
at Bhubaneswar  
01.11.2012.

Dictated and corrected by me and pronounced in the open Court this day the 01<sup>st</sup> day of November, 2012.

District Judge, Khurda  
at Bhubaneswar  
01.11.2012.

IN THE COURT OF THE DISTRICT JUDGE, KHURDA AT  
BHUBANESWAR.

Present:

Shri D. Dash,  
District Judge, Khurda  
at Bhubaneswar.

Dated, Bhubaneswar the 08<sup>th</sup> day of October, 2012.

F.A.O. 141 of 2011

[ Arising out of the order, dated 16.11.2011 passed by the learned Civil Judge ( Sr. Division), Bhubaneswar in I.A. No.423 of 2011 corresponding to C.S. No. 820 of 2011 ]

Dr. Jagannath Sahoo, aged about 62 years, S/o- Late Sridhar Sahoo, At- Sidharthanagar, Lane No.III, Plot No.1, Berhmpur, Pin- 760004, P.S - Baidyanathpur, Dist - Ganjam.

..... Appellant.

Versus-

M/s. Kumudin Project, A partnership firm having it's office at 53 New A.G. Co- Operative Colony, Kadru, P.O Harmu, P.S- Argora, Dist - Ranchi, Jharkhanda, represented by the Karta Sri Saroja Kumar Nanda, aged about 64 years, S/o- Late Sripati Nanda, At present - 59, Swornapuri, Kanan Vihar, Phase - II, Benint Ideal Sekular, P.O/P.S Chandrasekharpur, Dist - Khurda.

..... Respondent.

Counsel :

For the appellant	Shri Sarat Kumar Mishra and his assts.
For the Respondent	Shri S. Pani

Date of argument	:	28.09.2012
Date of judgement	:	08.10.2012.

JUDGEMENT

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This appeal has been preferred against order dtd.16.11.2011 passed by the learned Civil Judge (Sr. Division), Bhubaneswar in I.A No.423 of 2011, arising out of the C.S. No. 820 of 2011 in the matter of a petition under order 39 Rule 1 & 2 read with Sec. 151, C.P.C. By the said order learned Civil Judge, Sr. Division has dismissed the interim application filed by the appellant.

Facts necessary for disposal of this appeal are as under:-

2. The appellant as plaintiff has filed the suit for declaration of right, title, interest, confirmation of possession and relief of permanent injunction. It is his claim that the suit land stood recorded in the name of one Padmavati Debi in the Record of Right of 1962. Padmabati Debi died on 03.06.1962 leaving behind Debendranath Samantray and Mrutyunjaya Samantray her legal heirs as her daughter had predeceased. It is further stated that Harekrushna Harichandan Mohapatra after the death of Padamabati Debi managed to get a registered sale deed for the suit plot in his name in the year, 1963. After death of Harekrushna Harichandan Mohapatra his son Mahendra Narayan Deo sold a portion of land measuring Ac.0.200 decimals in favour of one Smt. Manjushree Acharya by registered sale deed dtd. 18.03.1981. It is claimed that said deed of sale is invalid and not acted upon. It is further stated that on Mrutyunjaya's death Debendranath Samantray, S/o- Padamabati Debi continued to remain in possession of the entire suit plot as it's sole owner. Then Manjushree has alienated her purchased land to the respondent in the year, 2009. So when the respondent attempted to possess the suit schedule property forcibly dispossessing the appellant, who had purchased the same from Debendranath Samantray by registered sale deed dtd. 1.07.2009 has been in possession of the same. The appellant thus claiming to be a bonafied purchaser for value and stating the respondent to be a stranger so far as the suit land is concerned has filed the suit along with the petition for temporary injunction.

3. The respondent contested by stating that Padmabati died after the execution of registered sale deed on 05.06.1963 and that too in the year 1965 at her parents house at village Malipada. According to their case, the appellant has got a fabricated document i. e. the death certificate and has procured it for the purpose by misrepresenting the fact. It is stated that the

appellant has never possessed the suit land at any point of time and the respondent claims his possession being it's absolute owner having of right, title, interest and possession. It is also his case that he having got a plan approved by the B.D. A for construction of a house has already staked raw materials for construction of the building over the suit land and other purchased land which is under his possession with boundary wall all around with a site house.

3. The Court below after hearing the parties and on going through the pleadings and perusing the documents placed has held that the appellant has no prima facie case. In view of the that he has next gone to hold that the balance of convenience also does not tilt in favour of the appellant and it is rather the respondent who would suffer irreparable loss in case of a order of restrain and not the appellant.

4. Learned counsel for the appellant submits that when it is his case that Padmabati died prior to the execution of sale deed from which the appellant claims to have ultimately derived the title and when he has filed the death certificate to that effect showing the date of death to be anterior to the said registered sale deed, the court below erred in law by showing that appellant has no prima facie case. It is his further submission that the appellant being in possession of the property ought to have been favoured with an order of injunction as prayed for.

Learned counsel for the respondent submits in support of the order passed by the Court below and according to him there is no justifiable reason to disagree with the view of the Court below so as to interfere with the order.

5. The claim of the appellant is that he has purchased the property from Debendranath Samantray by registered sale deed dtd. 01.07. 2009

whereas the respondent claims that he has purchased the property from Manjushree Acharya by registered sale deed dtd. 16.11.2009 who had purchased the same by registered sale deed on 18.03.1981 from Mahendra Naryan Deo, S/o- Harekrushna Harichandan Mohapatra. Title of that Harekrushna Harichandan Mohapatra is traced from the registered sale deed dtd. 05.06 1963. This deed of sale is now challenged by the appellant to be a fraudulent one and with that it is said that other subsequent transactions founded upon the same are nonest in the eye of law without any passing of right, title or interest whatsoever. The appellant in support of this vital fact has filed the death certificate of Padambati which indicates her date of death to be 03.06.1962. But it has been obtained by Mrutyunjaya who is none other than the son of Debendranath Samantray in a Misc. case in the year 2007 after 35 years of said death as stated initiated at his instance bearing No. 5/2007 which is seriously challenged by the respondent. Firstly, on the ground that under the provision of Registration of Death & Birth Act, 1969, which came into force in 1970 it is not permissible to grant a death certificate concerning the death of a person prior to that and next that it has been obtained long after 35 years the alleged date of death. It can not carry the presumptive value like other death certificates which are granted soon/ shortly after death. Although the said certificate is a public document, still the circumstances in the present case do not lead for its acceptance as it is without other evidence be led for consideration and decision during trial. The decisions of Hon'ble Court in case of '**Ranjan Vs. Arjun**' ; 2010 (I) OLR-493 and '**Nilamani V. Narottam**', 2008 (Supp-II) OIR -877 in view of my above discussion do not come to the aid of the appellant. On the other hand the date of registration is to be ordinarily deemed to be within knowledge. So, thereafter such a long wait and by obtaining a death certificate as above after

25 years use it as the weapon of challenge in my humble view are not the circumstances to be considered for favouring a prima facie case for the appellant which will of course be decided during trial. The dispute centers around the date of death of Padmabati so, burden heavily rests upon the appellant to establish the date of death of Padmabati by leading, clear, cogent and acceptable evidence during trial in the suit. The dispute even if any thus appears to be in dormant stage till year 2007 and then also for further 2 years till the sale deed came in favour of registered by the appellant it is sought to be pressed into service. In the mean time, the respondent has already got the land mutated in his name and he is tracing his title to the suit land to the registered sale deed of the year, 1963, which is now under challenge after 35 years. Series of transactions are also shown to have taken place since 1963 before the ultimate transaction standing in favour of the respondent.

6. Considering all these aspects and looking at position in the record of right carrying its presumptive value although rebuttable, I am of the humble view that the Court below has rightly found that the appellant has no prima facie case in her favour. With this finding and also back upon the mutated record of right, the view taken by the court below that the balance of convenience does not tilt in appellant's favour and that the respondent would suffer irreparable loss in the event of any order of restraint can not be found fault with.

In view of the aforesaid discussion, the appeal stands dismissed and in the circumstances without cost.

District Judge, Khurda  
at Bhubaneswar  
08.10.2012.

**-:130:-**

Dictated and corrected by me and pronounced in the open Court this day the 8<sup>th</sup> day of October, 2012.

District Judge, Khurda  
at Bhubaneswar  
08.10.2012.