

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

Present:

**Dr. D.P. Choudhury,**  
District Judge, Khurda  
at Bhubaneswar.

*Dated, Bhubaneswar the 26<sup>th</sup> Dec. '14.*

**F.A.O. No.67 of 2013.**

[Arising out of the order dated 25.03.2013 passed by the learned Civil Judge (Sr. Division), Bhubaneswar in I.A. No.1024 of 2012, corresponding to C.S. No.1960 of 2012.)

Sri Sukanta Kumar Ojha, aged about 42 years,  
S/o. Late Jagabandhu Ojha, At/P.O./P.S. –  
Mangalabag,  
Dist. – Cuttack.

... **Appellant.**

***-V e r s u s-***

1. Maa Tarini Eastcon (P) Ltd., Plot No.217(A),  
Sahid Nagar, At present : Plot No.69, Sahid Nagar,  
P.O. – Bhubaneswar-7, represented through  
Managing Director Sri. Niranjan Rana,  
aged about 42 years, S/o. Late Bansidhar Rana,  
At/P.O. – Baliana Patana, P.S. – Baliana,  
Dist. – Khurda.

... **Respondent.**

2. Nishamani Sahoo, aged about 72 years,  
W/o. Late Golakh Bihari Sahoo.  
3. Prasanna Kumar Sahoo, aged about 54 years,  
S/o. Late Golakh Bihari Sahoo.  
Both are At/P.O. – Naharakanta,  
P.S. – Mancheswar, Bhubaneswar,

Dist. – Khurda.

4. Prafulla Kumar Sahoo, aged about 47 years,  
S/o. Late Lokanath Sahoo, At - Baliana Talagarh,  
P.O./P.S. – Baliana, Dist. – Khurda.

... **Proforma Respondents.**

**Counsel :**

For Appellant : Shri A. Mohanty & Associates.  
For Res. No.1 : Shri B.B. Jena & Associates.  
For Res. Nos.2 & 3 : Shri S.C. Bastia & Associates.  
For Res. No.4 : Shri U.C. Senapati &  
Associates.

Date of arguments : 04.12.2014.

Date of judgment : 26.12.2014.

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

This appeal is directed against the order dated 25.03.2013 passed by the learned Civil Judge (Sr. Division), Bhubaneswar in I.A. No.1024 of 2012, arising out of C.S. No.1960 of 2012, directing both parties to maintain status quo over the suit property during pendency of the suit. Appellant is defendant-opposite party No.4, respondent No.1 is the plaintiff-petitioner, respondent Nos.2 to 4 are defendant-opposite party Nos.1 to 3 respectively before the Court below.

2. The parties hereinafter have been referred to as they have been arrayed in the Court below for the sake of convenience and proper appreciation.

**FACTS :**

3. The factual matrix leading to the case of the plaintiff is that he has purchased the suit land measuring Ac.0.18 decimals, out of Ac.0.78 decimals, from Golakha Bihari Sahoo on 25.11.2003 and since then he is in possession of the same. It is averred that defendant No.2 in connivance with defendant Nos.3 & 4 sold the total chaka plot No.146 under suit plot No.205 with an area of Ac.0.78 decimals to M/s. Bharat Motors Limited on 06.06.2011 represented by Om Prakash Didwania by fraud, but no possession was delivered to him. The plaintiff has kept in his possession the suit land by constructing a brick cemented boundary. The Record of Right of the suit land stands in favour of late Shyam Sunder Sahoo, who is the father of Golakha Bihari Sahoo. It is further averred that the sale transaction was made on 06.06.2011 behind the knowledge of the plaintiff and the said area under transaction covers the suit land of the plaintiff, which was illegal because once a portion of the suit plot is sold, defendant No.2 being the son of Golakha Bihari Sahoo has no right thereon to convey the same to M/s. Bharat Motors. On 25.11.2012, defendant No.1, who is the mother of defendant No.2, and other defendants tried to enter the boundary of the suit land to which the plaintiff objected. While leaving the suit land, the defendants shouted that they have sold the entire plot,

including the suit land, to M/s. Bharat Motors Ltd. Hence, the plaintiff has filed the suit for declaration of right, title, interest, confirmation of possession and for permanent injunction against the defendants from entering entering into the suit land. Pending finalization of the suit, the plaintiff filed I.A. No.1024 of 2012 praying to restrain the defendants-petitioners temporarily from entering into the suit land and the impugned order has been passed therein.

4. Defendant Nos.1 & 2 have filed written statement and show-cause, stating that they have only executed General Power of Attorney in favour of defendant No.4 to sell Ac.0.60 decimals out of the suit plot, but not Ac.0.78 decimals. Hence, there is no cause of action against them.

5. Defendant No.4 filed written statement/show-cause, stating, inter alia, that the suit is not maintainable, there is no cause of action to file the suit, the plaintiff has not come to the Court in clean hands, the suit is barred for law of limitation and the transaction of the plaintiff is void and illegal due to statutory ban under the Orissa Consolidation of Holdings and Prevention of Fragmentation of Land Act, 1972 (hereinafter called "the Act"). It is further contended that the suit is bad for non-joinder of necessary parties, as M/s. Bharat Motors Limited has not been impleaded as a party. It is the

further case of defendant No.4 that the sale, as alleged by the plaintiff, being a part of the suit plot is contravening the provisions of the Act and the plaintiff was never in possession of the same. Shyam Sunder Sahoo, who is the recorded owner, died leaving behind him son Golakha Bihari Sahoo and daughter Hemalata Sahoo. Golakha died leaving behind his wife defendant No.1 and son defendant No.2. On 06.06.2011, defendant Nos.1 & 2 represented through defendant No.4 and Hemalata through her General Power of Attorney Prasanta Kumar Pattnaik sold the entire plot to M/s. Bharat Motors Limited under Registered Sale Deed and they also delivered possession of the same to M/s. Bharat Motors Limited. Since then, M/s. Bharat Motors Limited is in possession of suit plot No.205. While refuting the entire averments made in the plaint, it is contended by defendant No.4 to dismiss the suit.

6. Defendant-petitioner No.3 was set ex parte.

7. After hearing both parties, the learned trial Court disposed of the Interim Application under Order 39, Rules 1 & 2 read with section 151 of the C.P.C. directing both parties to maintain status quo over the suit property during pendency of the suit.

**CONTENTIONS :**

8. Learned counsel appearing for the appellant

submitted that the learned Court below has not applied his judicial mind and directed the parties to maintain status over the suit land. According to him, the plaintiff has violated the provisions of the Act for which there is no prima facie case in his favour, although the learned Court below has erred in holding that he has got a prima facie case. The learned Court below has also erred in law by holding that the plaintiff has got balance of convenience in his favour without taking into consideration the possession of the third party, who has not been impleaded as a party to the suit. Thus, it was contended by learned counsel for the appellant that the impugned order is wrong and illegal, which is liable to be set aside.

9. Learned counsel appearing for the respondents submitted that the learned Court below has rightly observed that both parties are claiming possession over the suit property by filing their respective documents and the same is to be decided during final disposal of the suit. Supporting the order of the learned trial Court, he prayed to dismiss the appeal.

**DISCUSSIONS :**

10. Perused the plaint, written statement, petition, objection, impugned order, copies of documents filed, the lower Court record and the appeal memo. The xerox copy of the Sale Deed dated 25.11.2003 shows that Golakha Bihari Sahoo has

sold the suit land to the plaintiff and delivered possession of the same to him. Copy of the Record of Right published on 30.07.1980 shows that it is a chaka plot measuring Ac.0.78 decimals in the name of Shyam Sunder Sahoo. Copy of the General Power of Attorney shows that defendant Nos.1 & 2 being legal heirs of Golakha Bihari Sahoo have appointed defendant No.4 on 05.07.2006 as their General Power of Attorney. Defendant No.4 and Prasanta Kumar Pattnaik, who is the constituent Power of Attorney of Hemalata Sahoo, sold away the entire suit plot to M/s. Bharat Motors Limited. The said Sale Deed does not contain the signatures of defendant Nos.1, 2 & 3. Even if it is a chaka plot, but there is nothing found from the written statement that during pendency of the consolidation operation, a portion of the suit plot has been sold away. But, it is available from copy of the Registered Sale Deed executed in 1980 that Ac.0.18 decimals out of Ac.0.78 decimals has been sold to the plaintiff-petitioner. There is no material produced by defendant No.4 to show that permission was not obtained from the concerned Authority to sell the suit land in 2003 by Golakha Bihari Sahoo to the plaintiff. Apart from this, whether permission is obtained or not is a question of fact to be decided at the time of trial. Moreover, one Prasanta Kumar Pattnaik being not a Power of Attorney Holder

of Hemalata Sahoo has also executed the Sale Deed as per its contents, along with defendant No.4, in favour of M/s. Bharat Motors Limited. This is also subject to adjudication because a constituent Power of Attorney Holder, without any sort of right to sell the suit land, cannot be said to be prima facie proved to have got the right to sell. Moreover, no Legal Heir Certificate is filed to show that one Hemanta Sahoo is the daughter of late Shyam Sundar Sahoo.

11. Thus, the plaintiff has got a prima facie case in his favour because he has purchased the suit land at first and later on it was sold by defendant Nos.1 & 2, who have admitted to have not allowed their Power of Attorney to sell the entire plot. Consequently, defendant Nos.1 to 4 have no right to sell the entire plot, including the suit land of Ac.0.18 decimals. When the plaintiff has got prima facie case, balance of convenience leans in his favour. It is the case of the plaintiff that they put the boundary over the suit land and the defendants tried to encroach upon the same. As such, the plaintiff will suffer irreparable loss if injunction is refused. Thus, the plaintiff has well proved all the ingredients to obtain temporary injunction against the defendants. But, the learned Court below, without going into the merit of the case, simply passed the order of status quo to be maintained by both

parties, including the plaintiff. Undeniably, the plaintiff has not come on appeal; but when the appeal is filed, it is incumbent upon the Court to go through the entire documents to find out what relief can be granted to either of the parties. Be that as it may, the appellant, who is defendant No.4, has no prima facie case, but has got the order of status quo, which does not appear to be correct. As revealed from the materials on record, it is the appellant who will be restrained from interfering with the peaceful possession of respondent No.1 over the suit land and he cannot seek the interim relief against the respondents for the reasons aforementioned. So, there is justifiable grounds to interfere with the order of maintenance of status quo by both parties over the suit land, which is liable for modification. Hence ordered :

### **O R D E R**

The appeal stands dismissed on contest against the respondents without cost. The order dated 25.03.2013 passed by the learned Civil Judge (Sr. Division), Bhubaneswar in I.A. No.1024 of 2012, arising out of C.S. No.1960 of 2012, is hereby modified to the extent that appellant and respondent Nos.2 to 4 are to maintain status quo over the suit land during pendency of the suit.

It is made clear that this Court has not expressed

any opinion with regard to the merit of the case.

**District Judge, Khurda  
at Bhubaneswar.**

26.12.2014.

Dictated, corrected by me and pronounced in the open Court  
this day the 26<sup>th</sup> December, 2014.

**District Judge, Khurda  
at Bhubaneswar.**

26.12.2014.