

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

Present:

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

Dated, Bhubaneswar the 26th Nov. '14.

F.A.O. No. 91 of 2013.

[Arising out of the order dated 26.06.2013 passed by the learned Civil Judge (Jr. Division), Bhubaneswar in I.A. No.651 of 2012, corresponding to C.S. No.633 of 2012.]

1. Sri Upendra Kumar Parida, aged about 48 years,
S/o. Late Ramachandra Parida.
2. Dipak Kumar Parida, aged about 22 years,
S/o. Sri Upendra Parida.
3. Gaji Sahu, aged about 38 years,
S/o. Late Ulash Sahu.
All are of Village / P.O. - Kaimatia, P.S. - Jatni,
District - Khordha.

... **Appellants.**

-V e r s u s-

1. Padma Charan Dash, aged 59 years,
S/o. Late Harekrushna Dash.
2. Babina Dash, aged about 39 years,
D/o. Late Nrusingha Dash.
3. Mamata Dash, aged about 43 years,
W/o. Late Purna Chandra Dash.
4. Manas Ranjan Dash, aged about 23 years,
S/o. Late Purna Chandra Dash.
5. Kumari Puja Dash, aged about 21 years,

D/o. Late Purna Chandra Dash.
All are of Village / P.O. – Kaimatia, P.S. – Jatni,
District - Khordha.

... **Respondents.**

Counsel :

For Appellants : Shri D. Chakrabarty & Associates.
For Respondents : Shri M.P. Dhani & Associates.

Date of conclusion of arguments : 17.11.2014.

Date of judgment : 26.11.2014.

J U D G M E N T

Aggrieved by the order dated 26.06.2013 passed by the learned Civil Judge (Jr. Division), Bhubaneswar in I.A. No.651 of 2012, corresponding to C.S. No.633 of 2012, directing both parties to maintain status quo over the suit schedule property till disposal of the suit, the defendant-opposite parties therein have filed this appeal.

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 plaintiffs (respondents herein) is that one Harekrushna Dash, who is their common ancestor, is the recorded owner of the

suit land. Harekrushna Dash expired leaving behind him the plaintiffs. The suit land stands recorded in the Settlement Records of Right published in 1962 & 1982 and the plaintiffs are owners in possession of the same even after death of Harekrushna Dash. They have been paying rent to the State Government by obtaining receipts thereof. But, the defendants created problems for which the plaintiffs preferred a petition under section 144 of the Code of Criminal Procedure (hereinafter called “the Code”) before the Addl. D.C.P.-cum-Executive Magistrate, Bhubaneswar. There, defendant No.1 took time to frustrate the proceeding. When the statutory period under section 144 of the Code was going to expire, defendant Nos.1, 2 & 3 threatened to construct house over the suit schedule property of the plaintiffs. Finding no other alternative, the plaintiffs were compelled to file C.S. No.633 of 2012 for a decree of permanent injunction against the defendants restraining them from entering into the suit land. Pending finalization of the suit, the plaintiffs also preferred I.A. No.651 of 2012 to restrain the defendant-opposite parties temporarily from entering the suit land and raising any construction thereover.

4. Defendant Nos.1 & 2 filed written statement and objection stating that the suit is not maintainable, there is no

cause of action to file the suit, and the suit is bad for non-joinder of necessary parties. They have admitted that Harekrushna Dash is the recorded owner of the suit land; but for legal necessity he sold an area of Ac.0.054 decimals from suit plot No.192 on 08.10.1948 vide Registered Sale Deed to the father of defendant No.1. Since then, defendant Nos.1 & 2 are in peaceful possession of the said portion of the suit plot. But, during settlement operation, they could not submit the Sale Deed for which it could not be recorded. Since they are in possession of a portion of the suit land, prayer for permanent injunction against them does not arise. Thus, they prayed for dismissal of the petition as well as the suit.

5. After hearing both parties, learned Civil Judge (Jr. Division), Bhubaneswar came to the conclusion that since the dispute is with regard to possession of the suit land, status quo thereover should be maintained by them till disposal of the suit.

CONTENTIONS :

6. Challenging the order of the learned trial Court passed in I.A.No. 651 of 2012, learned counsel appearing for the appellants submitted that the order directing both parties to maintain status quo is wrong and bad in law. He further submitted that the learned lower Court should have taken into

consideration the documents of the defendant-opposite parties before passing the impugned order. According to him, the learned Court below has erred in law by not going through the plaint averments and objection filed by the parties. She has also erred in law by not realising the difficulties faced by the defendant-opposite parties who are to construct their house on the suit land and denying their rightful ownership by such status quo order. He further stated that the order of the learned Court below is bad, perverse and illegal in the eye of law. Thus, it was prayed to allow the appeal by setting aside the order of the learned trial Court.

7. On the other hand, learned counsel appearing for the respondents submitted that since they are in possession of the suit land and there is dispute with regard to its possession, the learned Court below has rightly passed the impugned order by directing both parties to maintain status quo over the suit land. So, he submitted to dismiss the appeal.

DISCUSSIONS :

8. Perused the plaint, written statement, petition, objection, impugned order, documents filed and the lower Court record. The plaintiffs have filed two original Records of Right. The Record of Right published in 1962 shows that the suit plot No.171 measuring Ac.0.070 decimals stands recorded

in favour of Harekrushna Dash. The Record of Right published in 1982 reveals that the corresponding sabik suit plot No.192 also stands in favour of Harekrushna Dash. Admittedly, Harekrushna Dash is the common ancestor of the plaintiffs. Moreover, the defendant-opposite parties have not filed a scrap of paper to show about execution of the Registered Sale Deed in 1948 by Harekrushna Dash in favour of the father of defendant No.1. Thus, prima facie it is proved by the plaintiff-petitioners that they are owners in possession of the suit land and, as such, they have a prima facie case. The learned Court below has not gone into this aspect while passing the impugned order. Moreover, there is allegation in the plaint that the defendants tried to possess the suit land for which the plaintiffs filed a case under section 144 of the Code, which is not denied by the defendant-opposite parties. Thus, balance of convenience leans in favour of the plaintiffs. Once the recorded owners are dispossessed, there will be definitely irreparable injury to the plaintiffs. So, all the ingredients have been proved by the plaintiff-petitioners to obtain an order of injunction, as prayed for by them. When all the ingredients have been proved by the plaintiff-petitioners to obtain an order of injunction, the impugned order directing the appellants to maintain status quo over the suit land cannot be said to be incorrect. But, the

learned Court below instead of directing the appellants to maintain status quo, has also passed orders directing the respondents to maintain status quo over the suit schedule property. Although the respondents have not challenged such order as to maintenance of status quo over the suit land by them, but the learned lower Court could have passed order only directing the appellants not to enter into the suit land. Be that as it may, there is no impediment for the Appellate Court to consider the impugned order as a whole, whether it is appropriate or not, even if the respondents have not challenged such order in the appeal. In view of the above analysis, in my opinion, the appellants will be only injuncted from coming over the suit land. Hence ordered :

O R D E R

The appeal is dismissed on contest against the respondents without cost. The appellants (defendant-opposite parties in the Court below) are hereby temporarily injuncted from coming over the suit land till disposal of the suit. The order dated 26.06.2013 passed by the learned Civil Judge (Jr. Division), Bhubaneswar in I.A. No.651 of 2012, corresponding to C.S. No.633 of 2012, is modified accordingly.

It is needless to state here that neither the discussion nor the observations made herein-above will have

any impact or influence in the mind of the Court below while deciding the suit.

**District Judge, Khurda
at Bhubaneswar.**

26.11.2014.

Dictated, corrected by me and pronounced in the open Court this day the 26th November, 2014.

**District Judge, Khurda
at Bhubaneswar.**

26.11.2014.