

I.A No. 955/2013
(Arising out of C.S No. 1962/2012)

1. Sri Balabhadra Parida, aged about 31 years
S/o Sri Rama Krushna Parida
At/Po-Sundarpada, P.S-Air field,
Bhubaneswar-751 002, Khurda.
2. Smt. Sangha Mitra Parida @ Marta, aged about 38 years
W/o Sri Srinivas Martha,
At-Gollabai, P.S-Jankia, Khurda.
3. Smt. Subhadra Parida @ Nayak,
W/o Amaresh Nayak
At-Chhakeisiani, Po/Ps-Mancheswar, Khurda.
4. Miss Sumitra Parida, aged about 26 years
D/o Rama Krushna Parida, At/Po-Sundarpada
P.S-Air field, Bhubaneswar-751 002, Khurda.
5. Smt. Nirupama Parida, aged about 60 years
W/o Sri Rama Krushna Parida,
At/Po-Sundarpada, PS-Air field,
Bhubaneswar-751 002, Khurda.

..... Petitioners

- Versus -

1. Smt. Sankuntala Pattnaik, aged about 57 years
S/o Sri Bidhan Chandra Pattnaik
Residing at Plot No.3, BJB Nagar,
Bhubaneswar-14, Kalpana Square,
P.S-Badagada, Dist-Khurda.
2. Sri Rohit Mohapatra, aged about 39 years
S/o Sri Sudhansu Kumar Mohapatra
Residing at Plot No. 3/A-6
Bishnupriya Apartment, Jaidev Vihar
P.S-Nayapalli, Bhubaneswar, Khurda.
3. Sri Rama Krushna Parida, S/o late Kapila Parida
At/Po-Sundarpada, P.S-Air field,
Bhubaneswar-751 002, Khurda.

..... O.Ps

22.09.2014

This is an application filed U/o.39 Rule-1 & 2 read with Section 151 of C.P Code by the petitioner for passing an order of injunction thereby restraining the O.Ps from creating any third party interest in respect of the suit land in any manner till disposal of the suit.

2. The case of the petitioners in brief is that the suit schedule A property as mentioned in the plaint and petition is the joint ancestral family property of the petitioners and the O.P No.3 which has not yet been partitioned by metes and bounds and all the cosharers have entitled for 1/6th share in the same. As such, none of the cosharers has any right to alienate the same or any portion thereof

without the consent of the other cosharers in any manner. Being the joint family property, the suit schedule A land is recorded in favour of the Karta of the family namely Sri Rama Krushna Parida who is the O.P No.3 in the I.A. The petitioner no.1 to 4 are the son and daughters of the O.P No.3 and the petitioner no.5 is the wife of the O.p No.3. While the matter stood thus, the O.P No.3 without taking any consent of the petitioners executed an illegal sale deed vide RSD dt. 01.06.2002 in favour of the O.P No.1 in respect of the suit A-1 schedule of property which is a part and parcel of suit schedule A property who in turn executed an illegal power of attorney vide GPA dt. 13.02.2013 in favour of the O.P No.2 without having any right, title and interest over the suit A-1 property. Taking advantage of such fraudulent deeds, the O.Ps are now trying to alienate the suit property depriving the right of the petitioners who are all entitled for 1/6th share each in the suit property. It is the further case of the petitioners that they are now in possession of the entire suit property. Hence, finding no other alternative, the petitioners are compelled to file the present suit for partition and the I.A for temporary injunction.

3. All the O.Ps appeared. The O.P No.1 & 2 filed their joint objection stating inter-alia that the O.P No.3 being the absolute owner of the suit property which is his self acquired property, for legal necessity sold some portion of the same i.e. plot no. 1589 measuring an area Ac0.423 decimals of land to the O.P No.1 for some consideration followed by delivery of possession. After purchase the O.P No.1 mutated her purchased property in her name by converting the kismam of the same. The O.P No.1 being a lady could not look after her purchased property for which she executed a general power of attorney in the year 2013 in favour of her son in law, the O.P No.2. The O.Ps further stated since the O.P No.3 is the absolute owner of the suit property which he acquired from his own income, the O.P No.3 had every right to transfer the same in favour of the O.P No.1 and the execution of sale deed by him in the year 2002 in favour of the O.P No.1 is legal and binding upon the petitioners. Submitting the above, the O.Ps have prayed to dismiss the I.A.

The O.P No.3 filed a separate objection stating inter-alia that the suit A property is a joint ancestral property of himself along with the petitioners and as such, each of them has 1/6th share over the same. Keeping faith upon the O.P No.1, the O.P No.3 had tried to give power of attorney in favour of the O.P No.1 to

look after the suit property. But taking advantage of the same, the O.P No.1 in the plea to execute a general power of attorney, has executed a fraudulent sale deed on 01.06.2002 in respect of plot no. 1989 measuring an area Ac0.423 decimals which is a part and parcel of schedule A property and got it registered in her favour by the O.P No.3. As such, the execution of the aforesaid sale is illegal and a void one and not binding upon him as well as the petitioners.

4. In order to succeed in a petition U/o.39 Rule-1 & 2, the petitioners have to establish their prima-facie case so also the balance of convenience in their favour. Moreover, it is also to be seen whether the petitioners will suffer any irreparable loss, if the prayer is denied.

5. Heard the learned counsel for the parties who submitted in support of their pleadings. Perused the documents filed by the parties. The fact remains admitted that the suit property originally stands recorded in the name of the O.P No.3, Rama Krushna Parida who is the father of the petitioner no.1 to 4 and the husband of the petitioner no.5. It remains also undisputed that a registered sale deed has been executed by the O.P No.3 in favour of the O.P No.1 on dt. 01.06.2002 in respect of the suit A-1 schedule property bearing plot no. 1989 area Ac0.423 decimals. It is the case of the petitioners that the suit A schedule property is the joint family property of the O.P No.3 being the karta of the family. It is not the self acquired property of the O.P No.3. As such, the O.P No.3 has no alienable right in respect of the same and he can not transfer the same in any manner in favour of anybody and each cosharer of the suit property has right, title, interest and possession over every inch of land. Hence, the execution of registered sale deed in favour of the O.p No.1 on dt. 01.06.2002 in respect of suit A-1 schedule property bearing plot no. 1989 area Ac0.423 decimals of land is illegal and void and it has no binding effect upon the petitioners. The learned counsel for the O.P No.1 & 2 submitted that when the O.P No.3 who is the father of the petitioner no.1 to 4 and husband of the petitioner no.5 has sold the suit property for consideration, being the Karta of the family even if for the sake of argument, it is held that the suit property is the ancestral property, the O.P No.3 being the Karta has got the legal authority to transfer the same and the O.P No.1 after her purchase since mutated the same, any restrain order will cause irreparable loss to the O.P No.1 and accordingly, the petitioners have also no prima-facie case.

The suit land is recorded in the name of the O.P No.3 and the O.p No.3 transferred the schedule-A-1 property to the O.P No.1 vide RSD dt. 01.06.2002 for consideration to meet the legal necessity as also evident from the deed itself. After the purchase, the O.P No.1 mutated the said sale deed in her name vide mutation case no. 4275/03 and also converted the kisam of schedule A-1 land to Gharabari and since then she has been paying rent in respect of the same. Though the petitioners have filed the suit for partition claiming the suit land as the ancestral property of O.P No.3, but there is no document to substantiate the same. Even otherwise if it is held that the suit land is the ancestral property of the petitioners, then under the Hindu Law the Karta of the family has got a right to sell the same for the legal necessity of the family. So far as the plea of the petitioners basing upon which they prayed for the partition, it makes out a prima-facie case. Here in this case, there is no plea that the O.P No.3 was not the Karta of the family at the time of the transfer in favour of the O.P No.1 and even there is no pleading to the fact that the O.P No.3 was acting contrary to the interest of the petitioners at that relevant time. When the O.P No.3, the head of the family transferred the A-1 property to the O.P No.1 in the year 2002, thereafter the fact of mutation and conversion by the O.p No.1 and the payment of rent by her for a long period i.e. more than a decade coupled with her assertion over the possession over her purchased land undoubtedly suggests that if the O.P No.1 will be restrained in any manner by way of injunction, she will suffer irreparable loss in comparison to the petitioners. Accordingly, the petitioners will not suffer any irreparable loss if the prayer for injunction is denied. So far as the balance of convenience is concerned as discussed above, the balance of convenience does not lean in favour of the petitioners rather it leans in favour of the O.P No.1 & 2.

So far as the other suit properties except the aforesaid purchased land of the O.P No.1 i.e. described in suit A-1 schedule, the balance of convenience leans in favour of the petitioners and if the O.Ps will change the nature and character of the same the petitioners will suffer irreparable loss.

Hence, ordered:

ORDER

The I.A be and the same is allowed in part on contest against the O.Ps, under the circumstances without any cost. The O.Ps are hereby restrained from changing the nature and character of the suit A schedule property till disposal of the suit i.e C.S No. 1962/2012 except the properties described in suit schedule A-1 of the petition which is also included in the schedule A property of the petition. So far as the properties described in schedule A-1 of the I.A, the I.A is dismissed.

Civil Judge(Sr.Divn.)
Bhubaneswar.

The order of the I.A is typed to my dictation by the Stenographer attached to this Court directly on the Computer provided under e-court project, corrected and pronounced by me in the open court today i.e. the 22nd day of September, 2014 under my signature below.

Civil Judge(Sr.Divn.)
Bhubaneswar.