

I.A. No.30/135 of 2014/2013
(Arising out of C.S.No. 178/207 of 2014/2013)

1. Godabarish Sahoo, aged about 55 years,
 2. Bhaskar Sahoo, aged about 43 years,
- Both are sons of Radhashyama Sahoo of Vill: Gobardhanpur
Samil Dhuanla, Po: Singheswar, P.S:Balugaon, Dist; Khurda
... Petitioners.

-Versus-

1. Radhashyama Sahoo, aged about 95 years, S/o Late Arjuna Sahoo of Vill: Gobardhanpur Samil Dhuanla, Po: Singheswar, P.S:Balugaon, Dist; Khurda, A/P: C/o Subhadra Sahoo, Vill/Po: Panchugaon, Via: Gambharimunda, P,.S:Banpur, Dist: Khurda.
2. Balaram Sahoo, aged about 35 years,
3. Krushna Sahoo, aged about 26 years,
Sl. No.2 & 3 are sons of Late Laxmidhar Sahoo.
4. Satyanarayan Biswal, aged about 58 years, S/o Late Nrusingha Biswal.
All are of Vill: Gobardhanpur Samil Dhuanla, Po: Singheswar, P.S:Balugaon, Dist; Khurda.
... Opposite Parties.

Counsel for petitioner – Sri S.Pattnaik Advocate and associates.

Counsel for opposite parties -- Sri B.S. Satapathy, Advocate and associates.

Date of hearing – 21.07.2014
Date of order – 26.07.2014

O R D E R

This is an Interim Application U/O.39 Rules 1 and 2, C.P.C. filed by the plaintiffs-petitioners for issuance of ad-interim injunction against the O.P Nos.1 to 3 from alienating the suit properties and also till disposal of the suit and to restrain the O.P No.4 from purchasing and entering upon it.

2. The case of the petitioners as per the said petition is that : they have filed the suit for permanent injunction against the O.Ps in respect to the suit properties mentioned in the schedule of the plaint. The suit properties includes the undivided dwelling house of the petitioners and Opposite Parties No.1 to 3 wherein they used to reside along with their family members. Regarding the suit properties it is further mentioned that over the suit plot No.132 and 133 the residential house of the petitioners and O.Ps 1 to 3 is there along with their bari which they are possessing for the purpose of raising seasonal crops. So far as the Plot No.31 is concerned that situates at the back side of the residential house intervened by the village road and that plot is used by O.Ps 1 to 3 and petitioners for the purpose of storing paddy crops hey and straws. It is claimed by the petitioners that they are using the same as a part of the dwelling house. The O.P No.1 is their father and O.Ps 2 and 3 are the sons of late Laxmidhar Sahoo who is the brother of O.P No.1. All of them are residing jointly in the undivided dwelling house However O.P No.2 & 3 separate in mess. The O.P No.4 is stranger to their family and is a mischievous person of the locality. So far as filing of the suit and interim application is concerned it is mentioned in the said petition by the petitioners that on 09.10.2013 they came to know that O.P No.4 is negotiating with O.Ps 1 to 3 to purchase the suit properties. Although the petitioners have objected to it the O.Ps did not pay any heed to them. It is claimed by the petitioners that over the suit property the dwelling house of the petitioners and O.P No.1 to 3 is there in which they are residing with their family members . The O.P No.4 is not a member of their family.

If the entire suit property will be sold to him the petitioners will be thrown out of their dwelling house and they will become homeless. On the other hand if a portion of the suit property will be sold to O.P No.4 it will be inconvenienced on the part of the petitioners to possess the property jointly as they are living with their family members. Citing the aforesaid facts the petitioners prayed to restrain the O.P Nos. 1 to 3 from alienating the suit properties and also to restrain the O.P No.4 either from purchasing the suit property or making an entry thereto.

3. Being summoned O.P.Nos 1 to 3 appeared and filed their show cause whereas O.P No.4 did not appear and was set exparte. O.P Nos 1 to 3 filed a joint show cause wherein they challenged the maintainability of the suit along with right of the petitioners from filing of the suit as well as the interim application. It is further mentioned in the show cause that O.Ps are the absolute owners of the suit property as the consolidation ROR stands recorded in the name of the O.P No.1 and his brother late Laxmidhar Sahoo who was succeeded by his sons O.P Nos 2 and 3. So,as it is claimed by the O.Ps 1 to 3 that the property is their absolute property the petitioners have no right over it. So far as dwelling of the parties is concerned it is mentioned that the dwelling house of the family situates over Plot No.131 and 132 whereas suit Plot No.31 is lying vacant. It is admitted by the O.Ps that the petitioners are residing in the said house of the O.Ps but at the mercy of the O.P No.1. Although they are residing with the O.P No.1, are not looking after him rather assaulting him. They are also not providing food and medicine to him but desire his death so that they can grab the suit properties. On the other hand as the O.P No.1 is

a very old and weak man having no income of his own so it is desirable on his part to sale a part of the suit property for his own maintenance and treatment. Although it is not mentioned in the show cause that as to which part of the suit property the O.P No.1 desires to sale, the same can be inferred from the W.S. It is clearly mentioned in the last line of para-10 of the W.S. The aforesaid fact was so inferred from the W.S. as the show cause is a part of W.S. That apart it is further mentioned in the show cause that the petitioners without any right have filed the suit to prevent the O.Ps from alienating the suit property to which they have every right to sale. Citing the aforesaid facts it is prayed by the O.Ps that the petition filed by the petitioner be dismissed.

4. I have already heard both sides. In an application U/o 39 Rule 1 and 2 C.P.C. the petitioners have to satisfy the court about the existence of prima faice case, balance of convenience and irreparable loss in their favour. So far as the prima facie is concerned the petitioners must satisfy the court that “there is a serious question to be tried during hearing of the suit and every probability tilts in his favour for the reliefs as sought for”. The prima facie case should not be confused with prima facie success but if simply there is existence of a serious question to be tried the test of prima facie case is satisfied. Here in this case as revealed from the ROR and the plaint filed by the plaintiffs- petitioners, the suit property stands recorded in the name of O.P No.1 and his brother Laxmidhar Sahoo who is the deceased father of O.P Nos.2 and 3. It also reveals from the plaint filed by the plaintiffs-petitioners that they have sought for the prayer of permanent injunction, simplicitor against the O.P Nos.1 to 3 from

alienating the suit properties without mentioning the fact that whether the alleged suit properties is the joint family properties of the parties or not. Simply it is mentioned in the plaint as well as in the petition that the petitioners and O.P Nos.1 to 3 are living in the dwelling house situated over plot No.131 and 132 jointly. On the other hand O.P Nos.1 to 3 claims that the suit property is their absolute property and petitioners do not have any right over it. If only the aforesaid facts are concerned in absence of any specific pleading about the nature of property to be joint family ancestral property it can be said that the the suit properties are the exclusively properties of O.P Nos.1 to 3 under that circumstances I am of the opinion that prima faice case does not tilt in favour of the petitioners rather it tilts in favour of the O.P No.1 to 3. If it is presumed that the suit properties are the ancestral properties then the question will arise as to whether O.P No.1 being the father and karta of the family can alienate it or not, and in that case in whose favour the prima facie case tilts. It is well settled law that Karta of the joint Hindu family can not alienate the coparcener property without legal necessity and coparcener has right to restrain the karta from alienating the coparcenary property if the same is made without legal necessities and if it is not for the benefit of the estate. So again the question will arise whether the petitioners by way of filing the interim application can restrain the O.Ps from selling the property or not. The O.P No.1 being the father and karta of his family has undoubtedly the power to alienate the joint family property for legal necessity or for the benefit of the estate as well as for meeting the antecedent debt. The grant of any type of injunction whether interim or

permanent will affect and prohibit the father of the petitioners permanently from selling or transferring the suit property belonging to the joint Hindu undivided family even if there is a genuine legal necessity for such transfer. "If such an interim application for injunction will be allowed the effect will be that whenever a father or a karta of the joint Hindu coparcener family will propose to sale such property owing to a bonafide legal necessity, any coparcener may come up with such an application and the father or the karta will not be able to sale the property for legal necessity until and unless the suit is decided." That view was expressed by the Hon'ble Court of Punjab & Haryana in the case of Sunil Kumar and another -vrs- Ram Prakash and others reported in AIR-1988 SC-576). That apart next contention of the petitioners is that they are residing over the suit property and if it is sold they will be house less but after perusal of the case record it is found that the dwelling house of the petitioners and O.Ps situates over the suit plot No.131 and 132 and it is claimed by the O.P No.1 that he wants to sale a part of Plot No.31 over which no dwelling house is situated. Considering the aforesaid facts I am of the opinion that the prima facie case does not tilt in favour of the petitioners.

So far as the irreparable injury and balance of convenience is concerned, irreparable injury is that when court's interference is necessary without which a right accrued in favour of a party concerned can not be protected from species of injury and comparative mischief which is likely to cause in absence of injunction will be greater and not compensiable is called balance of convenience. Here as mentioned above it is to be found

out whether the right of the petitioners can not be protected without the interference of the court and the mischief which is likely to be caused will be greater and not compensiable. On evaluating and analyzing the claim and counter claim of the parties it is find out that if the injunction will be allowed greater loss may be caused to the O.P No.1 but not to the petitioners. On the other hand the loss of the petitioners can be compensiable but not the loss of the O.P No.1 who is starving for his subsistance. At this juncture the question will arise as to how? The answer is as admitted by both the parties that the dwelling house situates over plot No.131 and 132. The claim of the petitioners is that if the O.Ps 1 to 3 sales the entire suit land they will be homeless and if a part of it will be sold out it will be inconvenient on their part to possess with any outsider. On the other hand the claim of the O.P No.1 is that he is 95 years old and not maintained by the petitioners who are his sons. So he requires money for his maintenance and treatment. That apart the O.P No.1 wants to sale a part of plot No.31 over which no dwelling house is there and it situates towards bari side of dwelling house, intervened by village road. In addition to the aforesaid facts the ROR reveals that the suit property is recorded in the name of O.P No.1 to 3 . In the aforesaid circumstances if the petition filed by the petitioners is allowed the petitioners will not sustain greater injury then that of the O.Ps especially the O.P No.1. So far as the protection the right of the petitioners is concerned they can challenge such sale if made by O.P No.1 on the ground of joint family property and legal necessity with a prayer for recovery of possession by way of separate suit. In the prayer portion of the

plaint it is mentioned specifically that (a) let the court be pleased to pass a decree for permanent injunction to restraint he defendant No.1 to 3 from alienating the suit property to the defendant No.4 or enter into the same or damaging the same. On the other hand in the I.A the prayer of the petitioners is to restrain the O.P Nos. 1 to 3 from alienating the suit property and the O.P No.4 be restrained to purchase the suit properties and from entering upon the same which was generalised so that the O.Ps can not sell the property to any body including the O.P No.4 which goes beyond the prayer made in the plaint. Considering the materials on record, I find that the petitioners have failed to establish all the three basic ingredients in their favour. Hence it is ordered that

O R D E R.

The Interim Application is dismissed on contest against the opposite parties Nos. 1 to 3 and without contest against O.P No.4. but in the circumstances there is no order as to cost.

Senior Civil Judge, Banpur.

Transcribed to my dictation, corrected and signed by me and pronounced in the open court this the 26th day of June, 2014.

Senior Civil Judge, Banpur.

