

I.A.34/2013

(Arising out of C.S. No.63/367 of 2005/2002)

Bhramara Naik aged about 78 years

S/o Late Banchhanidhi Naik

Village-Bhairpur, P.O.-Rajas

P.S.-Balipatna, District-Khurda.

.... Petitioner

- Versus -

1. Bauribandhu Naik aged about 36 years
2. Gangadhar Naik aged about 30 years
3. Buludhar Naik aged about 27 years

All are sons of Jairam Naik

Village-Bhairpur, P.O.-Rajas

P.Ss.- Balipatna, District- Khurda.

.... Opp. parties

01-07-2014

This is a petition U/O 39 Rule 1 and 2 read with Section 151 of C.P.C filed by the plaintiff-petitioner to pass an order restraining the opposite parties from cutting, removing and / or disposing the uprooted ' Chakunda ' tree from the suit land till disposal of the suit.

2. The case of the plaintiff-petitioner in brief is that defendant no.1 had sold out the suit property with a portion of house standing thereon in favour of opp. parties in 2002 contending that the suit plot stands recorded in his name alongwith the name of the petitioner in consolidation R.O.R and an amicable partition has been effected between them and the suit property has fallen in his share for which the plaintiff-petitioner has filed the suit for cancellation of the sale deed and alternatively for re-transfer of the suit property in his favour. One

Chakunda tree standing on the suit land has been uprooted and a major portion of it has fallen on the other portion of the suit plot and the Chakunda tree was not a subject matter of transaction in the sale deed and therefore opp. parties have no interest over the tree in question but they are bent upon to cut, remove and dispose of the tree making unlawful gain to them and causing great loss to the petitioner, valuation of which would be Rs.15,000/-. Hence, the petitioner to restrain the opp. parties from cutting, removing and / or disposing the uprooted tree.

3. Resisting the petition, the opp. parties have filed objection averring therein that the petitioner has neither any cause of action nor locus standi for filing the interim application. The petitioner has also not filed the petition with clean hand as he has suppressed the fact of pre-partition of the suit plot and therefore not entitled to any equitable relief of injunction. It is further averred that the petitioner as plaintiff has prayed in the suit for cancellation of the sale deed executed in favour of opp. parties or in alternative for re-transfer of the suit property in his favour and until the said relief is available to the petitioner, he is not entitled for the relief prayed in this interim application. It is admitted about the standing of Chakunda tree on the suit land and uprooted of the same but mere non-mention of the existence of Chakunda tree in the sale deed executed in favour of the opp. parties will not falsify the factual existence of the tree over the land of the opp. parties. The petitioner has no semblance of interest over the tree as the opp. parties were in enjoyment of the said tree to the knowledge of the petitioner since the date of purchase. It is specifically mentioned by the opp. parties that when the Chakunda tree was uprooted it created problem to the free enjoyment for which they removed the wood and branches by cutting into pieces by the end of October 2013 and therefore there is no portion of tree available on the suit

land. Regarding valuation of the tree, it is claimed by the opp. parties that the market value of the tree at best would be Rs.5000/-. Since the opp. parties have removed the Chakunda tree from the suit land prior to filing of the present petition and the petitioner having no prima facie case or balance of convenience leaning in his favour or suffering from any irreparable loss, the prayer for injunction is to be refused and the interim application is liable for dismissal.

4. In order to grant or refuse the prayer for temporary injunction during pendency of the suit, this Court is to decide the same with touch stone of three golden principles:-

- i) Prima facie case
- ii) Balance of Convenience
- iii) Irreparable Loss or injury.

5. So far as prima facie case is concerned, it is the claim of the plaintiff-petitioner that he alongwith Dibakar Naik are the recorded tenants and in joint possession over the suit plot but defendant no.1 claiming himself as the adopted son of the recorded tenant Dibakar Naik has illegally sold away the suit property in favour of the opp. parties which has been challenged by him in the suit praying for cancellation of the sale deed and alternatively for re-transfer of the suit property in his favour. This is a matter to be decided in the suit. But taking into consideration this fact it is found that the petitioner has a prima facie case.

So far as balance of convenience is concerned, as it gathers from the pleadings of the parties and during course of hearing that the Chakunda tree in question was standing over the suit plot and was uprooted in the last cyclone which has already been removed by making the log and branches of the tree into pieces before filing of this petition. Hence, it is gathered that no inconvenience is caused to the petitioner.

So far as irreparable loss is concerned, the petitioner himself has made valuation of the tree in question to Rs.15000/- and therefore no loss will cause to the petitioner which is irreparable.

In view of the aforesaid findings, this is not a fit case where injunction should be granted. Hence, the petition U/O 39 Rule 1 and 2 read with Section 151 of C.P.C is dismissed.

Hence, ordered.

ORDER

The petition U/O 39 Rule 1 and 2 read with Section 151 of C.P. Code is dismissed on contest but under the circumstances without any cost.

*1st. Addl. Senior Civil Judge,
Bhubaneswar*