

I.A. 411/2012  
(Arising out C.S. No. 615/2012)

Smt. Rashmi Satpathy, aged about 46 years,  
D/o. Rajkishore Satpathy,  
Vill. Ramkumarpur,  
P.O.Sompur, P.S.: Kishore Nagar,  
Dist. Cuttack.

... Petitioner

-Versus-

Gitanjali Jena, aged about 41 years,  
D/o. Sri Rajkishore Sahoo,  
At: Markendeswar Sahi, Dhipa Lane  
P.O./P.S./Dist: Puri

... Opp. Party

PETITION U/O. 39 RULE (1) & (2) OF C.P. CODE

14-11-2013

This is a petition U/O 39 Rules 1 & 2 r/w Section 151 of C.P Code for an order of injunction restraining the Opp. Party from creating any third party interest in respect of the suit land pending disposal of the suit.

2. That the suit land mentioned in Schedule 'A' of the plaint as well as in the petition appertaining to Khata No.623/31, Plot No.385/1441, Area Ac.0.180 decimals, Mouza Andilo, P.S. Baliana, Dist. Khurda is the self acquired property of the defendant. But the defendant in order to meet her legal necessity wanted to sell the suit land and accordingly after due negotiation with the plaintiff, the consideration money was fixed at Rs.8,00,000/-. The plaintiff paid a sum of Rs.5,000/- as a token money. Thereafter, the plaintiff paid Rs.5,50,000/- in advance and agreement for sale

was executed on 09.05.2011 wherein it was stipulated that the defendant would execute and register the sale deed in favour of the plaintiff on receipt of the balance consideration money of Rs.2,45,000/- within a period of one year from the date of the agreement. On the day of agreement for sale, the defendant handed over the documents in original of the suit land to the plaintiff in order to strengthen the agreement. But there was no delivery of possession. The plaintiff being a close person of the defendant and having a piece of land in her name adjacent to the suit land, she was looking after the suit land in order to protect the same from any encroachment as the defendant was residing away from Bhubaneswar and was coming to the suit Mouza occasionally. The plaintiff-petitioner was all along ready and willing to pay the balance consideration amount of Rs.2,45,000/- and approached the defendant several times for execution and registration of the sale deed but the defendant did not pay any heed and desired to sell the suit land to any third party at a higher rate. Hence, the plaintiff-petitioner filed a suit to enforce the agreement and this interlocutory application for an order of temporary injunction restraining the O.P from transferring the disputed land in any manner.

3. The defendant-Opp. Party pleaded that the suit as well as this interlocutory application are not maintainable due to misconduct on the part of the petitioner as the petitioner has manufactured the agreement for sale by forging her signature. It is claimed that the husband of the plaintiff and the husband of the defendant were friends at one point of time. The husband of the defendant who was working as an Engineer resided in the house of the plaintiff-petitioner at Dubai for one and a half years for prosecuting higher study. During that period two adjacent plots were purchased by them in the name of their wives of which this suit land belongs to the defendant-O.P. During her stay with the plaintiff-petitioner, the original sale deed in respect of the suit land was in the possession with plaintiff-petitioner. During course of lapse of

time both the parties got their marriage dissolved their marriage with their respective husbands. In this process, there is no link between the husband of the plaintiff-petitioner with the plaintiff-petitioner and the husband of the defendant-O.P. with the defendant-O.P. When the defendant-O.P. demanded the plaintiff-petitioner to return the sale deed executed in respect of the suit land, the plaintiff-petitioner did not return it taking various pleas. It is claimed that the agreement indicates that artistically the signature of the O.P has been forged which can be easily detected by naked eye if it is compared with the true signature of the O.P. The date of execution of the agreement and the date of filing of the suit shows that as if the petitioner was waiting for expiry of the stipulated period of one year as per the agreement to file the suit. The O.P. denied to have executed any such agreement for sell with the petitioner, she has not received any consideration money nor she has approached the petitioner for sell of suit land. Besides this, it is averred that the petitioner does not claim that she has issued any written notice expressing that she was ready and willing to purchase the land on payment of rest consideration which otherwise establishes that there was no actual agreement. The petitioner has got no prima facie case as the O.P has no intention to alienate the suit property and the alleged agreement for sale is a forged document and there is no real threat of danger to the suit property. A lis pendence sell is also subject to the result of the suit, hence, there is no scope for taking plea of multiplicity of litigations and as the petitioner's case is based upon a forged document, question of irreparable injury to her in the event of alienation by the O.P is misconceived. The O.P being the owner and possessor of the suit land would put into serious inconvenience and shall suffer serious injury if any interim order will be passed in favour of the petitioner and therefore balance of convenience leans in favour of the O.P. With this averment, the O.P prays to dismiss the interim application.

4. Heard learned counsels from both sides at length. It is submitted by the counsel for the plaintiff-petitioner that the allegation raised by the defendant-O.P. that the plaintiff-petitioner has forged her signature and manufactured a forged agreement for sale is false and baseless and this is a matter which should be raised and decided during trial. It is further submitted that the documents like agreement for sale, Registered Sale Deed of the suit land are in possession of the plaintiff-petitioner which prima facie shows that she has a case as well as balance of convenience leans in her favour and if the O.P is not restrained from alienating the suit land in favour of any third party, the petitioner will suffer irreparable loss. On the other hand, learned counsel for the defendant/O.P. contended that the petitioner has not at all a prima facie case because the very document i.e. the agreement for sale which is the basis for filing a suit for specific performance is unregistered and is a forged one. He forcefully contended that the signature of the defendant/O.P. appearing on the agreement for sale does not resemble with her true signature. This apart, no notice was issued by the plaintiff-petitioner to the O.P for which the suit as well as this interlocutory application is not maintainable. He relied on the decision reported in **2007 (II) OLR 548**, wherein it is held that *“Injunction is a form of equitable relief and they have to be adjusted in aid of equity and justice to the facts of each particular case. It is not a violation of every legal right which justifies the grant of an injunctive remedy. Injunction can be issued where the right which is sought to be protected is clear and unquestioned and not where the right is doubtful and there is no emergency and further where the injury threatened is positive and substantial and is otherwise irremediable”*. In the other decision relied by him reported in **1997(3) CCC 305 (Orissa)**, it is held that *“Civil Procedure Code, 1908 – Order 39, Rule-1- Principles on which grant of injunction rests – can be granted where the right is sought to be protected is clear & unquestioned & not where the right is doubtful- Injury threatened is*

*positive & substantial to otherwise irremediable-Conduct of person seeking injunction must be free from shadow of unfairness. Controversy between parties was regarding interpretation of a particular clause in lease deed-No scope found for interference in the order of lower appellate Court which had reversed order of restrained passed by trial Court”. He also relied on a decision reported in **95 (2003) CLT 652** , wherein it is held that “ *Alienation- During the pendency of the suit, if the defendants make any alienation of property, shall be subject to the provisions in Section 52 of the Transfer of Property Act, 1882 – No necessity to pass order of prohibition, prohibiting the opp.party not to alienate the property during pendency of suit*”. The last decision relied by him reported in **2006 (Suppl. II) OLR 486** , wherein it is held that “*Any alienation that may be made would be subject to decision of the Civil Court*”*

5. 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.

6. So far as prima facie case is concerned, the documents like registered sale deed of the disputed property executed in favour of the defendant-O.P., Record of right of the said land are now in possession of the plaintiff-petitioner. The plaintiff-petitioner has also produced the agreement for sale in respect of the disputed land executed between them. It is claimed by the petitioner that she has paid substantial amount out of the agreed consideration. The main dispute raised by the defendant-O.P is that the plaintiff-petitioner has forged the signature of the O.P on the agreement for sale. The O.P is vehemently denying execution of any such deed. With such material on record, I am of the view that whether the document i.e. agreement for sale is a forged one or not that will be gone into

during trial. However, all these materials establishes that the petitioner has a prima facie case.

If during pendency of the suit the O.P alienates the suit land in favour of any third party, it will lead to multiplicity of proceedings and may convert the suit for specific performance to a case involving complicated question of title which may ultimately lead to change of nature and character of the suit. Therefore, the balance of convenience will be to allow the suit land to remain as it is till final disposal of the suit.

In the case reported in 2007(II) OLR 548 it is held by Hon'ble High Court of Orissa that “ injunction is a form of equitable relief and they have to be adjusted in aid of equity and justice to the facts of each particular case”. It is also the settled principle that the principles laid down by Hon'ble Courts from time to time depends on the facts and circumstances of each case and those have no universal application. I carefully perused all the decisions filed by the learned counsel for the O.P. Out of the four decisions relied on him, the decision reported in 2006 (Suppl. 2) OLR 486 relates to a case for Specific Performance of contract where Memorandum of Understanding (M.O.U) between two companies was executed to the effect that the defendant Company would transfer some shares at some rate and further allot some share at some other rate in favour of the plaintiff company and the plaintiff company would provide secretarial assistance to the defendant company and will also extend financial help for day to day management of the defendant company. But the defendant company after receiving huge amount from plaintiff company did not transfer any share rather he was going to sell away the company by transferring his shares to some other person instead of plaintiff which is in violation of the terms and conditions embodied in the M.O.U. In that context it was held by Hon'ble High court that rejection of interim application under Order 39, Rules-1 & 2 of C.P. C by the lower courts

was justified. With utmost regard to all the authorities of law cited above, it may be said that those have no application in the present case considering the facts and circumstances of the case.

So far as the question of irreparable loss or injuries is concerned, in case, there is alienation of the disputed land during pendency of the suit the subsequent purchaser will definitely attempt to take possession of the land and in that event the petitioner may resist the same which will ultimately lead to law and order situation and possibility of injury to person and property cannot be ruled out may not be always compensated by money.

7. So, in consideration of the facts and circumstances of the case and considering the only challenge of O.P on the genuineness of the agreement for sale on the ground of forgery of her signature thereon which is a matter to be gone through during trial and the principles as laid down to be considered by the court for granting or refusing any interim relief, this court is of the considered view that the plaintiff-petitioner successfully satisfies to establish a prima-facie case in her favour and the balance of convenience also lean in her favour and in case the disputed land is not protected from any lispendense transfer, the petitioner may suffer irreparable loss or injury as discussed above. So this is a fit case to direct both the parties to maintain Status quo over the suit land as on today. Hence, ordered.

### **ORDER**

The application U/O-39 Rules (1) & (2) read with Section 151 of C.P Code is disposed of on contest but without cost. Both the parties are directed to maintain Status quo over the suit schedule land till disposal of the suit.

*Ist*

*Addl.*

*Senior*

*Civil  
Bhubaneswar.*

*Judge,*

