

I.A. No.59/2013
(Arising out of C.S. No.91/2013)

1. Nanda Kishore Sahoo, aged about 86 years,
S/o Late Alekh Sahoo,
2. Dillip Ku. Sahoo, aged about 29 years,
S/o- Nanda Kishore Sahoo,
3. Rekha Sahoo, aged about 45 years,
W/o- Sukanta Sahoo
D/o- Nanda Kishore Sahoo
Vill- Kudapatna, Ps- Balipatna,
Dist-Khurda.
4. Babaji Sahoo, aged about 59 years,
S/o- Late Alekh Sahoo
5. Pradip Ku. Sahoo, aged about 25 years,
S/o- Babaji Sahoo,
6. Ila Rani Sahoo, aged about 33 years,
W/o- Bhagirathi Sahoo
D/o- Babaji Sahoo
7. Jay Krishna Sahoo, aged about 51 years,
S/o- Late Alekh Sahoo
8. Trilochan Sahoo, aged about 25 years,
S/o- Jay Krushna Sahoo,
9. Manoranjan Sahoo, aged about 22 years,
S/o- Jay Krushna Sahoo,
10. Seemanjali Sahoo, aged about 26 years,
W/o- Siba Sundar Sahoo
D/o- Jay Krushna Sahoo
Vill- Banamalipur, Ps- Balipatna,
Dist-Khurda
Sl. No.1, 2, 4 to 9 are of village Damana,
Po- Patia, Ps- C.S.Pur,
BBSR, Dist-Khurda.

Sl. No.1 to 10 are represented
Through their attorney holder
plaintiff No.11 vide GPA No.11081224423 Dtd.29/12/12
11. Smt. Basanti Lata Singh, aged about 42 years,
W/o- Raghunandan Singh,
Residing at Plot-145 and 146,
Ananta Biharm, Behind B.P.U.T Office,
Pokoriput, Ps- Airfield,
Bhubaneswar, Dist- Khurda.

.... **Petitioners**

- Versus -

Smt. Susama Sahoo,
W/o- Sri Dayanidhi Sahoo,
Vill- Damana, PO/Ps- Chandrasekharpur,
Bhubaneswar, Dist-Khurda.

.... O.P

26-09-2014

This is a petition filed by the plaintiff-petitioners U/O 39 Rule 1 and 2 read with Section 151 of C.P. Code praying therein to restrain the O.P. not to enter into the suit land and not to disturb in peaceful possession of the petitioners.

2. The case of the plaintiff-petitioners in short is that plaintiff nos.1 to 10 have filed the suit for permanent injunction through their Attorney Holder plaintiff no.11. The disputed property as described in the schedule of the petition jointly recorded in the name of their predecessors-in-interest late Alekha Sahoo and predecessors-in-interest of defendant nos.1 to 4 late Anadi Sahoo and they are in possession over the same. Defendant no.5 who is the sole O.P. in this interim application has purchased the entire disputed property bearing Plot no.1243 area Ac.0.400 decimals from defendant nos.1 to 4 which is in excess to the extent of their share and therefore the said transaction made by defendant nos.1 to 4 in favour of O.P. is void ab initio and not binding to the petitioners. It is also averred that there was a mutual partition between Anadi Sahoo and Alekh Sahoo in respect of the suit land and other undisputed properties but the present suit land alongwith the other undisputed properties stood recorded jointly in the name of both of them. It is further averred that the O.P. being unsuccessful to get possession of the entire land of Ac.0.400 decimals she applied her mastermind and to strengthen her illegal sale deed she further got registered a consent deed from Bhanumati, mother of defendant nos.1 to 4 in her favour on 02-06-2011. Now the O.P. with the help of defendant nos.1 to 4 wants to take possession of the suit land forcibly and if she is not restrained the petitioners will suffer irreparable loss.

3. Resisting the petition the O.P. filed objection averring therein that she has purchased the entire land from defendant nos.1 to 4 as the said land falls

in the share of defendants by virtue of registered partition deed bearing no.7658 dtd.05-10-1970 executed between Anadi Sahoo and Alekh Sahoo and since the date of purchase she is in possession over the same and paying land revenue through her vendors. It is claimed that the entire landed properties situated at Mouza Gadakana, Chandrasekharpur, Damana and Patia were amicably partitioned between Alekh Sahoo and Anadi Sahoo prior to final publication of settlement R.O.R in the year 1973-74 but except the present property in Mouza Patia, all other properties have been recorded separately but the present property is still in joint record and taking such advantage the plaintiff no.11, the Power of Attorney Holder of plaintiff nos.1 to 10 has initiated this proceeding for her personal gain causing loss to her. As regards execution of consent deed by Bhanumati, mother of defendant nos.1 to 4 in favour of the O.P., it is averred that Bhanumati could not appear in the office of Sub-Registrar at the time of execution of registered sale deed due to her sudden illness for which to avoid any legal complicity she again executed a consent deed but she is no more now in the world to claim her right and her share devolved upon defendant nos.1 to 4. Lastly it is stated that in order to extract some money the petitioners taking advantage of such wrong recording in the settlement R.O.R have filed this case but they have no prima facie case nor balance of convenience leans in their favour and if prayer for injunction is refused then the petitioners will not suffer any irreparable loss. Hence, prayed for dismissal of the interim application.

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 the 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, the plaintiff-petitioners admitted about prior partition but claims that according to mutual partition both Anadi and Alekh (predecessors-in-interest of plaintiffs and defendant nos.1 to 4)

had got their respective half share each and after their death their successors-in-interest are in peaceful possession over their respective allotted share and the final settlement R.O.R finally published in the year 1973-74 of the suit land alongwith other undisputed land stood recorded jointly in the name of Anadi and Alekh. But defendant nos.1 to 4 have executed registered sale deed in respect of Plot no.1243 to the extent of total area of Ac.0.400 decimals in favour of O.P. which is excess to their share. The petitioners have filed certified copy of R.O.R finally published in 1973 which reveals that the suit land alongwith some other properties of Mouza Patia stands jointly recorded in the name of Anadi and Alekh. On the other hand, the case of the O.P. is that there is mutual partition between Alekh and Anadi through a registered partition deed in the year 1970 and the suit land has fallen in share of Anadi i.e. predecessor-in-interest of defendant no.1 to 4. In this respect he filed xerox copy of the said partition deed but has not filed the certified copy of the same. Perusal of the said document it is seen that only this plot of suit mouza i.e. the suit land has fallen in share of predecessor-in-interest of defendant no.1 to 4. The said document further reveals that the parties have properties in four mouza. The R.O.R filed by the petitioners reveal that besides this suit land there are some other lands located in the suit mouza. It is also the stand of the petitioners that if the R.O.R is wrongly published then the defendants should have taken steps for correction of the same but within this 40 years they have not taken steps for correction of the R.O.R. The O.P. remained silent to such submission of the petitioners. Considering recording of suit land and other lands of suit mouza jointly in the name of Anadi and Alekh in the R.O.R. it is held that the petitioners have prima facie case.

6. There is no dispute that O.P. has purchased the entire land of Ac.0.400 decimals appertaining to Plot no.1243 at Mouza Patia from defendant nos.1 to 4. But only dispute is that defendant nos.1 to 4 have sold excess to their share. Admittedly the suit land is not homestead land. Whether defendant nos.1 to 4 are entitled to get the whole area of the suit land or half of it is not a matter to be decided in the present application. But as they have sold the land to the O.P., so the O.P. has stepped into the shoe of defendant nos.1 to 4

and becomes a co-owner. Hence, a co-owner should not be restrained to enter into his property. There is claim and rival claim on possession over the disputed land. So, balance of convenience would be to remaintain the status of the land as it is. In the present case, certainly refusal of grant of injunction will not cause loss to any party which cannot be repaired. Under such circumstances it is a fit case wherein ends of justice would be subserved if both parties be directed to maintain status-quo over the suit land till disposal of the suit.

Hence, ordered.

ORDER

The interim application U/O 39 Rule 1 and 2 read with Section 151 of C.P. Code is disposed of on contest. Both the parties are directed to maintain status quo over the disputed land as described in the schedule of the application till disposal of the suit.

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