

I.A. 35/2012

(Arising out C.S. No. 31/2012)

Smt. Laxmipriya Khatei,
aged about 50 years,
W/O. Fagu Khatei, of
Village/P.O-Harirajpur,
P.S-Delanga, District-Puri.

... Petitioner

-Versus-

1. Srinibas Patra, aged about 60 years,
S/O. Late Debaraj Patra, of
Village/P.O-Harirajpur, P.S-Delanga,
District-Puri.
2. Srikanta Kumar Patra, aged about 26 years,
S/O. Rabindra Kumar Patra, of
Village/P.O-Harirajpur, P.S-Delanga,
District-Puri.

... Opp. Parties

PETITION U/O. 39 RULE (1) & (2) R/W SECTION 151 OF C.P. CODE

17-01-2014

This is a petition U/O 39 Rules 1 & 2 r/w Section 151 of C.P Code filed by the petitioner praying therein to pass an order of injunction against the Opp. Parties not to interfere in the peaceful possession of the petitioner over the schedule of land.

2. The case of the plaintiff-petitioner in brief is that he purchased two two plots from O.P. No.1 through two registered sale deeds during the year 1996. Thereafter, O.P. No.1 delivered physical possession of the said suit land and since then the petitioner is in peaceful possession thereover. But the O.P. No.1 while executing the sale deeds has wrongly mentioned the Plot No.2178 instead of 3830 but the Mouza, Khata and boundary remain the same. During current settlement operation, the Field Enquiry Amin pointed out that the petitioner is in possession over Plot No.3830 although in the sale deed the plot number is mentioned as 2178. The O.P.

No.1 conceded his mistake and consented for correction of the plot from 2178 to 3830 in the publication of R.O.R and accordingly the petitioner obtained certified copy of the yadast.

On 25.12.11 when O.P. No.2 alongwith his labourers forcibly tried to plough the schedule of land. The petitioner came to know that O.P. No.1 for the second time has sold the schedule of land to O.P No.2 and then obtained certified copy of the said sale deed. As per the petitioner, the said sale is void and O.P. No.1 has no right, title and possession over the schedule of land. With this averments the petitioner prays for order of injunction against the O.Ps.

3. Resisting the petition, the O.Ps filed objection averring therein that O.P. No.1 has not wrongly mentioned Plot No.2178 instead of 3830 rather, in fact, he has sold Plot No.2178 to the petitioner. The petitioner is never in possession over Plot No.3830. O.P. No.1 had never given consent for correction of Plot No.2178 to 3830. It is alleged that the petitioner and her husband managed to get such yadast record but cannot derive title through such vague yadast. It is averred that originally Debraj Patra was the recorded owner of the suit land as per 1962 Settlement R.O.R and after his death O.P. No.1 and defendant No.2 being the son and daughter respectively of said Debraj inherited the suit land. They for their legal necessity alienated the suit plot no.3830, area Ac.0.685 decimals, Khata No.530 to O.P. no.2 through registered sale deed dtd.04.09.10 and delivered possession thereof and since then the O.P. No.2 is in peaceful possession. The O.Ps also mentioned that the area of Plot no.2178 is Ac.0.770 decimals whereas area of Plot no.3830 is Ac.0.685 decimals. Accordingly, it is prayed that the interlocutory application filed by the petitioner be dismissed with cost.

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 two numbers of registered sale deeds filed by the petitioner reveals that he has purchased a portion of Plot No.2178 on 05-02-96 and rest portion on 09-09-06, total measuring an area of Ac.0.770 decimals of land, she is paying land revenue for the same. The sale deed executed by O.P. no.1 and his sister in favour of O.P. no.2 in the year 2010 is also available on record which discloses that O.P. no.2 has purchased Plot no.3830. It is submitted by the petitioner that the boundary mentioned on her both the sale deeds is as per Plot no.3830 and O.P. no.1 had given delivery of possession of Plot no.3830 and since 1996 she is in possession.

In course of hearing, it is admitted by the O.Ps that the boundary mentioned in both the sale deeds executed in favour of the plaintiff-petitioner is same as boundary of Plot no.3830. But the very pertinent question raised by the O.Ps that both the sale deeds were executed by the son of Debraj Patra whereas the property of Debraj Patra devolved to his son and daughter after his death and in the year 2010, the son and daughter of said Debraj jointly executed the sale deed in favour of the O.P. no.2 and therefore, the earlier sale deed executed by the son i.e. Srinivas Patra (O.P. no.1) is not a valid one. It is also submitted on behalf of the O.Ps that no rectification deed is filed. So far as the yadast filed by the petitioner is concerned, learned counsel for the O.Ps submitted that it is not final rather it is in draft stage and the genealogy shown in the yadast discloses that Debraj has no daughter which is completely false.

Admittedly, O.P. no.1 has executed two numbers of sale deeds in favour of the petitioner in 1996. It is also admitted that boundary mentioned in both the sale deeds is as per the boundary of Plot no.3830. The yadast filed by the petitioner shows that she is in possession of Plot

no.3830. Law is well settled that when a property is described by plot number and by boundaries, if there is any discrepancies so far as the identity is concerned, the property described by boundaries will prevail. In view of the matter and considering materials on record, it is found that the petitioner has got prima facie case.

So far as balance of convenience is concerned, the allegation of the petitioner is that O.P. no.2 along with labourers forcibly tried to plough the schedule of land which shows that he wants to dispossess the petitioner from Plot no.3830. Whether the plaintiff-petitioner has purchased Plot no.2178 or 3830 and whether the sale deed is to be corrected or not is a matter to be decided in the suit. But at present considering the possession of the petitioner over Plot no.3830, it is found that balance of convenience lies in her favour.

So far as irreparable loss or injury is concerned, it is the case of the petitioner that O.P. no.1 along with his labourers threatened to murder her, forcibly tried to dispossess her. If O.Ps will not be restrained from such act, the petitioner

may resist the same which may lead to law and order situation which may result in loss of life and limb and which cannot be compensated by any means.

In view of the aforesaid discussions, it is found that the petitioner has got prima facie case, balance of convenience lies in her favour and there is chance of irreparable loss to her if the O.Ps proceed to take possession of Plot no.3830. But under the peculiar circumstances, ends of justice will be met if both the parties be directed to maintain status quo over Plot no.3830.

Hence ordered.

ORDER

The petition U/O 39 Rule 1 and 2 of C.P. Code filed by the petitioner is allowed on contest against the O.Ps but without any cost. Both the parties are directed to maintain status quo over the schedule of land appertaining to Plot no.3830, Khata no.530, area Ac.0.685 decimals in Mouza- Kanti, Tahasil- Jatni, Dist. Khurdha till disposal of the suit.

1st. Addl. Senior Civil Judge,
Bhubaneswar