

I.A No.05/14 (GN)
(Arising out of C.S No-08/2014)

Ganesh Baral aged 50 yrs S/o-Late Udayanath Baral
Of Vill-Chandrapur, PO-Pariorada
PS-Tangi,Dist-Khordha

.....Petitioner.

-Versus-

Kartika Baral aged 55 yrs S/o-Late Udayanath Baral
Of vill-Chandrapur,PO-Pariorada
PS-Tangi,Dist-Khordha.

.....Opp Party.

Counsel for petitioners..... Sri N.Das & Associates
Counsel for Opp. Parties.....Sir H.K.Jagadev & Associates

Date of Hearing-14.8.2014

Date of Order-19.8.2014

ORDER

1. This order arises in respect of the original interim application filed by the petitioner U/o 39 Rule 1 and 2 CPC for temporarily injunctioning the opposite party from entering upon the property described in the schedule of the plaint and interim application (hear in after

referred to as the suit property) and not to enter over the suit plot or to do any illegal construction therein till disposal of the suit.

2. The petitioner's case in short is as follows –

One Ganesh Baral is a permanent resident of village Brahmandi and the suit scheduled property stands recorded in the name of Udayanath Barad S/o Iswar Barad, Meru Barad S/o Gobinda Barad, Bana Barad, Danei Barad S/o Sahadev Barad, Pahali Barad S/o Mahadev Barad, Batu Barad, S/o Padu Barad. As per the family partition they enjoy peaceful possession over the suit land. After the death of Udayanath Barad the legal heirs used to possess the suit land and the suit land was separated between them. The petitioner and the Op are two sons of Udayanath and the suit land belongs to the petitioner and Op had received the considerable amount from the petitioner regarding that without executing any sale deed. Having mala fide intention the defendant creates all sort of disturbance over the suit land. Ld counsel for the petitioner further submitted that the petitioner is in peaceful possession over the suit land after purchase of his share from Op who happens to be his own brother. Being the own brother of the petitioner the Op has not kept the trust by forcibly entering the suit plot and constructed there over.

The Op has filed objection stating that the petitioner has not come to the court with clean hands as he is a member of joint family and a co-sharer of the suit property. The documents submitted by the petitioner reflect that the property is a joint family property and all the recorded tenants described there in have got interest, possession and title there in who were not made parties. It is further objected by the Op that the father of the petitioner and the Op has also got other sons and

daughters who have got joint right, title and interest in the suit property who were not made parties in the suit and here the balance of the convenience is not in favour of the petitioner. The petitioner has not come to the court with clean hands rather suppressed the facts. All the allegations against the Op have false and Op is staying in the suit land along with other brothers from the time of his father and has never got any occasion to discuss with the petitioner regarding sale of the property. There was no partition either between the tenants of the ROR of khata no-4 or between brothers and sisters residing in the suit land. Petitioner was never in possession of the entire suit plot. To grab the suit property alone the petitioner has filed this false case.

3. The law has been well settled to obtain an order of temporary injunction, for which three fundamental ingredients must be establish i.e. visually prima facie case, balance of convenience and irreparable loss.

The petitioner in support of his claim of ownership and possession over the suit property though has produced the ROR but it clearly reflects that the ROR stand recorded in the name of the father of both the parties as well as other co-sharers. The petitioner has also produced one rent receipt in connection to this case. As per the ROR the suit scheduled property i.e. khata no-04, plot no-22, area- Ac.0.039 decimals is in possession of the father of both the parties namely Udayanath Barad.

In the circumstances of this case and in view of the documents available, taking into account of all the evidence from both the sides it is concluded that, the petitioner might have got prima facia

case but the balance of convenience does not leans in his favour and further it is of my view that if this temporary injunction is not granted in favour of the petitioner there will be not any irreparable loss.

Having regards to the aforementioned discussion and keeping in view of the documents available before this court, it is concluded that all the three basic ingredients for obtaining an order of temporary injunction does not tilt in favour of the petitioner in this case. Hence the petition filed U/o 39 R 1 &2 CPC by the petitioner stands rejected.

ORDER

The interim application stands rejected and in the circumstances the interim application disposed of accordingly without any cost.

Nyayadhikari,Tangi

Transcribed to my dictation, corrected and signed by me and pronounced in the open court on this the 19th August 2014.

Nyayadhikari,Tangi