

I.A No. 216/2013
(Arising out of C.S No. 410/2013)

Santosh Kumar Das, aged about 34 years
S/o late Ramesh Chandra Das
resident of Vill/Po-Gopinathpur, PS-Lingaraj,
Bhubaneswar, Dist-Khurda.

..... Petitioner

– Versus –

1. Himansu Sekhar Pattanaik, aged about 47 years
S/o Baishnab Charan Pattanaik, falsely claiming as
Himanshu Sekhar Das, S/o late Abhaya Charan Das
resident of Vill/Po-Malipada, PS-Chandaka, Khurda.
2. Baishnab Charan Pattanaik, aged about 79 years
S/o late Udayanath Pattanaik, resident of Vill/Po-Malipada
P.S-Chandaka, Dist-Khurda.
3. Smt. Nilima Ray, aged about 53 years
W/o Dillip Ray, resident of Plot No. 3/B, near Governor House
Unit-VIII, Po-Surya Nagar, PS-Capital, Bhubaneswar, Khurda.
4. Mr. Sandeep Ray, aged about 33 years,
Son of Dillip Ray, resident of Plot No. 38, Kalyani
near Governor House, Unit-VIII, Po-Surya Nagar,
P.S-Capital, Bhubaneswar, Khurda.
5. M/s Ray Industries Pvt. Ltd. represented through its
Managing Director, Mr. Sandeep Ray, aged 33 years,
S/o Dillip Ray Office at Plot No. 3/B, Kalyani,
near Governor House, Unit-VIII, Po-Surya Nagar,
P.S-Capital, Bhubaneswar, Khurda.

..... O.Ps

18.09.2014

This is an application filed U/o.39 Rule-1 & 2 read with Section 151 of C.P Code by the petitioner for passing an order of injunction thereby restraining the O.Ps from interfering into his peaceful possession over the suit land in any manner and so also from creating any third party interest in respect of the same till disposal of the suit.

2. The case of the petitioner in brief is that originally the suit

land which comes under Plot No. 14, Khata No. 75 measuring an area Ac1.641 decimals of Mouza-Gopinathpur originally belonged to Rajkumari Das, W/o Abhaya Charan Das, Bipra Charan Das and Nimai Charan Das, Sons of late Padma Charan Das. Rajkumari Das and Abhaya Charan Das had no issue. The petitioner and the prof.defendants are the son and daughter of one late Ramesh who is the son of late Bipra. As the three sons of Padma Charan were living in jointness, during the last consolidation operation, some RORs have been prepared jointly in their names, but so far as the present suit land is concerned, it was exclusively recorded in the name of Rajakumari Das, W/o of Abhaya excluding the name of Bipra and Nimai. But as Abhaya and Nimai had no sons and daughters, though all the three sons of Padma Charan were jointly enjoying the suit property, Bipra and his son Ramesh being the sole survivor of the family never alleged to correct the ROR in their names. But taking the old age and innocence of Rajakumari, her brother, the O.P No.2 executed an adoption deed on dt. 31.05.2972 in favour of one Pranabandhu Pattnaik who is the son of sister of Rajakumari. Taking advantage of said adoption deed, the O.P No.2 tried to dispose of some property and challenging the same, Ramesh, the father of the petitioner filed O.S No. 39/1972 where the learned Civil Judge(Sr. Divn.), Puri has held that Pranabandhu Pattnaik is not the adopted son of Abhaya and Rajakumari. The said judgment and order also confirmed in T.A No. 29/27 of 1976/74. On death of Ramesh Chandra Das and Nimai Charan Das in the year 1992 & 2001 respectively, the petitioner and her mother reposed confidence on the O.P No.2 as there was no male member in their

family. But very recent the petitioner came to know that the O.P No.1 fraudulently showing himself as the son of Abhaya and Rajakumari, sold the suit land to the O.P No.3 vide RSD dt. 04.01.1995. The O.P No.3 knowing very well that the O.P No.1 is not the son of Rajakumari with an ulterior motive executed a General Power of Attorney dt. 11.06.2010 in respect of the suit land in favour of the O.P No.4 who in turn executed a gift deed in respect of the same vide regd. Gift deed dt. 19.11.2011 in favour of the O.P No.5. The OP No.5 on the basis of said illegal and invalid gift deed, mutated his name and converted the kism of the suit land to Gharabari. As the OP No.5 created disturbance in the possession of the petitioner, the petitioner challenging the status of the O.P No.1 so also the transactions from O.p No.1 to O.P No.5 as illegal and void has filed this suit for declaration of his right, title, interest over the suit land so also this I.A for temporary injunction.

3. The O.P No.1 & 2 though appeared and participated in the hearing of this I.A, but have not chose to file any written objection.

The O.P No.3 to 5 appeared and filed their objection jointly challenging the I.A stating inter-alia that the suit so also the I.A is not maintainable and have taken the plea that the suit property was the exclusive property of Rajakumari Das and the consolidation ROR in respect of the same stands in her name. It is their case that the O.P No.1 is the adopted son of Rajakumari who sold the same to O.P No.3 by RSD dt. 04.01.1995 and the O.P No.3 through his power of attorney holder, the O.P No.4 gifted the suit land in favour of the O.P No.5 by regd.deed of gift

dt. 19.11.2011 and accordingly, the O.P No.5 mutated the suit land in his favour and converted its kisam to gharabari and finally the mutated ROR has been published in his name. The O.P No.5 claimed to be in the possession of the suit property as owner thereof and it is their specific plea that the petitioner has no right, title, interest and possession over the suit land. Submitting the above, it is urged by the O.Ps to dismiss the I.A.

4. In order to succeed in a petition U/o.39 Rule-1 & 2, the petitioner has to establish her prima-facie case so also the balance of convenience in her favour. Moreover, it is also to be seen whether the petitioner will suffer any irreparable loss, if the prayer is denied.

5. Heard the learned counsel for the parties who submitted in support of their pleadings. Perused the documents filed by the parties. The fact remains admitted that the suit property originally stands recorded in the name of Rajakumari in the year 1979. The petitioner claims that the suit property on the basis that since Rajakumari and her husband, Abhaya died issue less so also Nimai, the other brother of Abhaya died issue less, he being the sole successor of the family succeeded the suit property and accordingly, he is in possession over the same as owner thereof. The petitioner in his pleading challenged the status of the O.p No.1 and the transfer by the O.p No.1 in favour of the O.P No.3 and the subsequent transactions in respect of the suit property including the mutation and conversion of the same in favour of the O.p No.5. The learned counsel for the petitioner submitted that the certified copy of the judgment passed in O.S No. 21/45 of 1972-73 which shows that in the said suit it has been clearly held

by the Hon'ble Court that neither Ramesh Chandra Das nor Pranabandhu Pattnaik is the adopted son of Abhaya and Rajakumari and the said judgment was confirmed in T.A No. 29/27 of 1974-76 vide judgment dt. 14.12.1979. So the question of adoption of the present O.P No.1 by Rajkumari does not arise. The present O.P No.1 claims to be the adopted son of Rajakumari Das and in support of such adoption, the learned counsels for the O.Ps relied upon the deed of acknowledgment of adoption dt.20.03.1987. On perusal of the said adoption deed, it is found that the O.P No.1 was adopted on 07.10.1976 and at that time the Title Appeal bearing 29/27 of 1974-76 was pending in which Rajakumari was the respondent No.2. In that appeal, there is no whisper as to the adoption of this O.P No.1 by Rajkumari. However, the adoption of the O.P No.1 by Rajkumari is the matter of dispute in this suit which will decide the fate of this suit. Law is well settled that while deciding a matter U/o.39 Rule-1 & 2 of C.P C, the Court should not go into the merit of the suit in detail. The transactions in between the O.P No.1 & 3, O.p No.3 &4 and ultimately O.P No.4 & 5 are dependent upon the adoption of the O.P No.1 by Rajakumari. Without going into unnecessary details, at this stage when the petitioner is claiming the suit property as legal successor of Rajakumari and at the same time challenging not only the adoption of O.P No.1, but also the transactions which started from the O.P No.1, this Court is of the view that the petitioner has a strong prima-facie case and the balance of convenience also leans in his favour. On the other hand, the O.P No.5 has mutated the suit land in his favour and even converted the same into homestead. Law is well settled that the ROR or

mutation does not create or extinguish any right and at the same time, the fact of mutation and conversion implies the possession of the person in whose favour the mutation has been allowed. Even though it is held that the O.P No.5 is in possession over the suit property for the sake of argument, if the O.P No.5 will raise any permanent construction over the suit land during the pendency of this suit, no doubt the petitioner will suffer irreparable loss.

Hence, ordered:

ORDER

The I.A be and the same is allowed in part on contest against the O.Ps, under the circumstances without any cost. Both the parties are directed to maintain the status quo over the suit land till disposal of the suit i.e. C.S No. 410/2013.

Civil Judge(Sr.Divn.)
Bhubaneswar.

The order of the I.A is typed to my dictation by the Stenographer attached to this Court directly on the Computer provided under e-court project, corrected and pronounced by me in the open court today i.e. the 18th day of September, 2014 under my signature below.

Civil Judge(Sr.Divn.)
Bhubaneswar.