

I.A. No. 34 of 2014.

(Arising out of R.F.A. No.637 of 2014.)

1. Duryodhan Mohapatra, aged about 46 years.
2. Dhusasan Mohapatra, aged about 41 years.
Both are sons of Late Kartik Mohapatra.
3. Sankar Mohapatra, aged about 66 years,
S/o. Late Akarana Mohapatra, but wrongly
mentioned as Son of Late Krushna Chandra Mohapatra.
Sl. Nos.1 to 3 are of Vill. – Sarakantara (Hatsahi),
P.S. – Khandagiri, Dist. – Khurda.
4. Smt. Binapani Dixhit, aged about 42 years,
W/o. Purna Chandra Dixhit of Village - Kakudia,
P.S. – Delang, Dist. – Puri.

... **Petitioners.*****-V e r s u s-***

1. Smt. Santilata Sahoo, aged about 54 years,
W/o. Banamali Sahoo and D/o. Late Nath Sahoo,
At/P.O. – Sarakantara, P.S. – Khandagiri, Dist. – Khurda.
2. Smt. Basanti Sahoo, aged about 49 years,
W/o. Panchanan Sahoo and D/o. Late Nath Sahoo,
At - Gadakana, P.S. – Mancheswar, Bhubaneswar,
Dist. – Khurda.

... **Opp. Parties.**Date of argument : 06.01.2015.

Date of order : 17.01.2015.

No.13, Dated 17.01.2015.**O R D E R**

This is an application under Order 39, Rules 1 & 2 of the C.P.C. read with section 151 of the C.P.C. filed during pendency of the appeal to restrain the respondents-opposite parties from alienating the suit land and disturbing the joint possession of the petitioners thereover till disposal of the appeal.

2. Learned counsel appearing for the petitioners submitted that they have got prima facie case and balance of convenience lies in

their favour and if an order of injunction is not issued, they will suffer irreparable loss or injury.

3. Learned counsel appearing for the opposite parties submitted that the judgment and decree have been passed in favour of the opposite parties, who were plaintiffs before the learned trial Court, and their right, title and interest have been declared and their possession has been confirmed. He further submitted that the materials on record will disclose that prima facie case and balance of convenience lean in favour of the opposite parties. If an order of injunction is issued, as sought for by the petitioners, the opposite parties will suffer irreparable loss or injury for which it was prayed to reject this application. Heard.

4. Perused the impugned judgment and decree, plaint, written statement, petition, objection, memorandum of appeal and documents of both parties. It is needless to say that the decree has been passed in favour of the opposite parties by declaring their right, title and interest and confirmation of their possession. By the order of the learned trial Court, the petitioners, who were the defendants in the suit, have been permanently restrained from interfering with the possession of the plaintiffs, who are opposite parties herein.

5. On going through the materials on record, it appears that I.A. No.582 of 2010 was filed before the Court below and vide order dated 28.12.2010, the learned trial Court had directed both parties to maintain status quo over the suit land pending finalization of the suit. There is no appeal filed against such order and, finally, the matter was disposed of with passing of decree in favour of the plaintiffs. When there is decree in favour of the plaintiffs, definitely pending finalization of the

appeal, prima facie case lies in favour of the respondents, who were the plaintiffs before the Court below. Moreover, they have got prima facie right, title, interest and possession as per the decree, which is assailed in this appeal, and balance of convenience lies in their favour.

6. Any decision on this petition while considering the materials on record will certainly amount to disposal of the appeal. On the other hand, if at all the petition for injunction is allowed in favour of the petitioners, the opposite parties will suffer irreparable loss. The appeal has been filed challenging the impugned judgment and decree passed by the learned trial Court. In such circumstances, for the preservation of the property and the fact that status quo over the suit land was maintained in the lower Court till disposal of the suit, the same shall also continue to be maintained till disposal of the appeal. Hence ordered :

O R D E R

The I.A. is partly allowed with the observation that both parties will maintain status quo in respect of the suit land till disposal of the appeal. Expedite hearing of the appeal, as L.C.R. has already been received.

The interim application is disposed of accordingly. No cost.

**District Judge, Khurda
at Bhubaneswar.**

17.01.2015.

Dictated & corrected by me.

**District Judge, Khurda
at Bhubaneswar.**

17.01.2015.

