

**IN THE COURT OF THE DISTRICT JUDGE, KHURDA  
AT BHUBANESWAR.**

Present:

**Dr. D.P. Choudhury,**  
District Judge, Khurda  
at Bhubaneswar.

*Dated, Bhubaneswar the 15<sup>th</sup> Sept. '14.*

**F.A.O. No. 129 of 2013.**

[Arising out of the order dated 16.09.2013 passed by the learned Civil Judge (Jr. Division), Bhubaneswar in I.A. No.141 of 2013, corresponding to C.S. No. 146 of 2013.]

Gitanjali Biswal, aged about 40 years, Wife of Sahaji Charan Biswal, Vill./P.O. – Sundara, P.S. – Astaranga, Dist. – Puri.

... **Appellant.**

***-V e r s u s-***

1. Rajib Lochan Sahoo, aged about 24 years, Son of Jadunath Sahoo, Vill./P.O. – Banamalipur, P.S. – Fategarh, Dist. – Nayagarh. At present : At/P.O./P.S. – Athagarh, Dist. – Cuttack.
2. Suresh Chandra Maharana, aged 42 years, Son of Not Known, Vill. – Nuagaon, P.O. – Itipur, P.S. – Lingaraj, Bhubaneswar, Dist. – Khurda.

... **Respondents.**

**Counsel:**

For Appellant : Shri P.K. Pattnaik & Associates.

For Res. No.1 : Shri R.C. Sarangi & Associates.

For Res. No.2 : Bandita Maharatha.

Date of conclusion of argument : 28.08.2014.

Date of judgment : 15.09.2014.

## **J U D G M E N T**

This appeal is directed against the order dated 16.09.2013 passed by the learned Civil Judge (Jr. Division), Bhubaneswar in I.A. No.141 of 2013, arising out of C.S. No. 146 of 2013, directing the parties to maintain status quo in respect of the suit property till disposal of the suit. Appellant is defendant No.1-opposite party No.1, respondent No.1 is plaintiff-petitioner, and respondent No.2 is defendant No.2-opposite party No.2 in the Court below.

### **FACTS :**

2. The case of the plaintiff (respondent No.1 herein) is that one Sasanka Sekhar Mishra purchased suit schedule 'A' property from its true owner, namely, Sudarshan Maharana vide Registered Sale Deed No.4320 dated 01.10.1993. Said Sasanka Sekhar Mishra executed Power of Attorney in favour of his representative, who got the kissam of schedule 'A' property converted vide O.L.R. Case No.1822 of 2007. For legal necessity, Shri Mishra sold said schedule 'A' property to

the plaintiff and defendant No.2 by virtue of Registered Sale Deed No.2287 dated 11.02.2009 and delivered possession of the same to them. After purchase of suit schedule property, plaintiff and defendant No.2 constructed a boundary wall and continued to possess the same. Defendant No.1 created disturbance over the land for which the plaintiff has to approach the police and, after intervention of police, the matter was pacified. But, on 11.03.2013, the plaintiff came to know that some persons were raising an intervening boundary wall in the middle portion of schedule 'A' property claiming that they have purchased schedule 'B' property, which is nothing but a portion of schedule 'A' property. The agents of the defendants threatened him to face dire consequences and tried to raise construction over schedule 'A' property. Finding no other way, the plaintiff has filed the suit for permanent injunction to restrain the defendants and their agents from entering into schedule 'A' property on the pretext of claim over schedule 'B' property and from raising any construction over schedule 'A' property. Pending finalization of the suit, the plaintiff filed the Interim Application for restraining the defendants from entering into schedule 'A' property and from raising any construction over the same on the guise of claim over schedule 'B' property. Hence, the case of the plaintiff-

petitioner in the lower Court.

3. The case of defendant No.1 (appellant herein) is that there is no substance of truth behind the case of the plaintiff and she refuted all the allegations made against her. According to defendant No.1, suit khata No.340, plot No.262, chaka No.118, area Ac.1.955 decimals of mouza Nuagaon corresponding to mutation khata No.353/140, plot No.262, area Ac.1.661 decimals originally belonged to Trilochan Maharana and others. There was a suit for partition bearing No.C.S.293 of 2008, wherein there was a compromise between the parties. In that suit, Trilochan Maharana, Niranjana Maharana, Bipin Bihari Maharana and Sudarshan Maharana (vendor of Sasanka Sekhar Mishra) got an area of Ac.0.488 decimals each. As per that compromise decree, the parties got their respective shares at schedule 'A', 'B', 'C' & 'D' properties. Trilochan Maharana, in order to sell his share, executed a Power of Attorney in favour of one Batakrushna Maharana vide Deed No.4120 dated 24.02.2010. Then, said Batakrushna Maharana sold an area of Ac.0.076 decimals (sub plot Nos.100 & 100A) to Sasmita Pradhan vide Registered Sale Deed dated 27.12.2010. While in possession of the purchased area, Sasmita Pradhan sold an area of Ac.0.031 decimals, out of said Ac.0.076 decimals, to defendant No.1 through

Registered Sale Deed dated 19.01.2011 and delivered possession. Defendant No.1 got the said land mutated in her favour and also obtained permission from Bhubaneswar Development Authority to construct house thereon. It is the further case of defendant No.1 that the suit properties have not been properly described and the suit is defective under Order 7, Rule 3 of the C.P.C. The plaintiff fraudulently managed to record his name in respect of schedule 'A' property, which is a part of the purchased property of Sasmita Pradhan. As such, the plaintiff has no manner of right, title, interest and possession over schedule 'A' property appertaining to plot No.262/1255 of Trilochan Maharana, who sold the same to Sasmita Pradhan, and out of that, Sasmita Pradhan sold Ac.0.31 decimals to defendant No.1. It is also averred in the written statement that when Sasmita Pradhan purchased an area of Ac.0.391 decimals from the eastern side of suit plot No.262 and the plaintiff claimed Ac.0.051½ decimals from the western side of said plot, it is false to say schedule 'A' property has been validly purchased by Sasanka Sekhar Mishra on 01.10.1993 and, subsequently, it was transferred to the plaintiff under Registered Sale Deed dated 11.02.2009. So, the case of defendant No.1 is that when the vendor of the plaintiff has no other land to sell pursuant to execution of

Registered Sale Deed No.2287, the plaintiff has derived no right, title, interest and possession over schedule 'A' property. It is the further case of defendant No.1 that due to such dispute, there was intervention of police and police warned the plaintiff not to interfere with her possession over schedule 'B' property, which is a part of schedule 'A' property. It is further stated by defendant No.1 that there is no cause of action to file the suit and, as such, the plaintiff has nothing to pray for any temporary injunction against her.

4. Taking into consideration the pleadings and contentions advanced by the parties as well as the documents produced by them, the learned Court below passed the impugned order directing the parties to maintain status quo, as there is dispute relating to execution of Sale Deeds and demarcation of the suit land. Challenging such order of the learned Civil Judge (Jr. Division), Bhubaneswar, the present appeal has been filed by defendant No.1.

**CONTENTIONS :**

5. It was submitted by learned counsel appearing for the appellant that the order of the learned Civil Judge (Jr. Division) is wrong, illegal and contrary to law, as the same is against the documentary evidence on record and is liable to be set aside. The learned Court below has committed error by

directing both parties to maintain status quo and failed to appreciate the documents filed by both the parties. The learned lower Court has also erred in law by not holding that respondent No.1 has no prima facie case in his favour, when respondent No.1 has failed to produce any document except mutation Record of Right and rent receipt. The learned Court below has acted illegally by not giving due importance on the decree passed in C.S. No.293 of 2008 and Sale Deeds executed by recorded tenant Trilochan Maharana in favour of Sasmita Pradhan and subsequent Sale Deed in favour of the appellant. The learned Court below has further committed illegality by not discussing prima facie case, balance of convenience and irreparable loss while passing the order of status quo to be maintained by the parties. So, it was prayed by learned counsel for the appellant to set aside the impugned order and allow the appeal.

6. Learned counsel appearing for respondent No.1 submitted that the order of status quo to be maintained by the parties, as passed by the learned Court below, is wrong, as the prayer for injunction made by respondent No.1 was not given due deal of consideration. He argued that even if he has not challenged the order in question, he has got every right to advance submission against illegality of the order in view of

the settled position of law. According to him, he has got prima facie case and balance of convenience is in his favour. In the event status quo order is lifted, respondent No.1 would be put to irreparable loss. He submitted for grant of injunction against appellant and respondent No.2.

7. Learned counsel for respondent No.2 filed hazira, but did not submit anything save and except supporting the order of the learned Court below.

**DISCUSSIONS :**

8. Perused the plaint, written statement, petition, objection, impugned order and the documents filed by the parties. On going through the copy of the Sale Deed dated 01.10.1993 executed by Sudarshan Maharana, it is revealed that Sasanka Sekhar Mishra has purchased Ac.0.391 decimals out of Ac.1.955 decimals vide suit plot No.262, chaka No.118 and khata No.340. It has been specifically mentioned in that Sale Deed that this Ac.0.391 decimals has fallen to the share of Sudarshan Maharana in their family partition and said area is to the east of the entire area of Ac.1.955 decimals. The said purchased area has been given boundary and it has been mentioned that the co-sharers of Sudarshan Maharana have got land to the west of the said sold area. The xerox copy of irrevocable General Power of Attorney executed by Sasanka

Sekhar Mishra in favour of M/s. Hitech Estates & Promoters (P) Ltd. shows that such property has been authorised to be sold after due conversion, observance of necessary formalities and receipt of consideration by the said Power of Attorney Holder on behalf of Sasanka Sekhar Mishra. These documents have been objected by learned counsel for respondent No.1 on the ground that they have been filed at appellate stage without complying with the manner of filing the same. It is very strange to see that respondent No.1 objected to the said documents, whereas it is his case that Sudarshan Maharana has sold schedule 'A' property to Sasanka Sekhar Mishra, who in turn sold the same to the respondents. Since the document dated 01.10.1993 is the origin of solving dispute and respondent No.1 has relied upon those documents and they would decide the crux of the matter, there is no bar under the provisions of law for production of copies of the same at the appellate stage.

9. The original Registered Sale Deed shows that the Power of Attorney Holder i.e. Director of M/s. Hitech Estates & Promoters (P) Ltd. sold sub-plot No.100 measuring an area of Ac.0.051  $\frac{1}{2}$  decimals out of Ac.0.391 decimals being demarcated in trace map. Accordingly, mutation Record of Right shows that suit plot No.262/1255 of such area has been recorded in favour of the respondents. On comparison of the

boundary of the original Sale Deed dated 01.10.1993 executed in favour of Sasanka Sekhar Mishra by Sudarshan Maharana with the boundary, as described in the Registered Sale Deed executed in favour of the respondents by the General Power of Attorney Holder, it is found that the same do not tally with each other inasmuch as Ac.0.391 decimals lies towards the east of Ac.1.955 decimals, whereas this sub-plot No.100 sold in favour of respondent No.1 is to the west. Not only this, but also, the certified copy of the decree in C.S. No.293 of 2008 shows that there was compromise between co-sharers of Sudarshan Maharana, wherein Ac.0.488 decimals out of suit plot No.262 has been assigned to the east of entire plot of Ac.1.955 decimals marked as 'D', which goes to legal heirs of Sudarshan Maharana, then the share goes to Bipin Bihari Maharana vide 'C', then the share goes to Niranjan Maharana vide 'B' and thereafter the share goes to Trilochan Maharana vide 'A'. So, the main road actually touches to the south of the plot allotted to Trilochan Maharana. This matter is discussed because the averment made in the original Sale Deed dated 01.10.1993 has got complete corroboration to this arrangement made in the compromise decree of the Court, where the parties have amicably compromised according to the respective portion of the joint family property occupied by them. Be that as it may,

the averment made in the written statement that when Sudarshan Maharana got property in the east and sold the same to Sasanka Sekhar Mishra and respondent No.1 claimed an area of Ac.0.051½ decimals from the western side of suit plot No.262, respondent No.1 cannot be said to have come with clean hands. On the other hand, the Mutation Record of Right does not show which side of the property has been purchased by the respondents. It is also found that respondent No.1 has not produced the original Registered Sale Deed dated 01.10.1993 and General Power of Attorney in the lower Court, whereas the said documents being produced by the appellant in this Court have been objected by learned counsel for respondent No.1. This conduct of respondent No.1 intensifies doubt that he had tried to obtain the order of injunction by suppressing the material facts. Not only this, but also it has been elaborately noted in the written statement that the Power of Attorney Holder has continuously sold under different Sale Deeds by making sub-plots of plot No.262 with an area of Ac.0.391 decimals of Sasanka Sekhar Mishra and all the plots are to the western side as per xerox copies of Sale Deeds filed before this Court. The reason is best known to the concerned Power of Attorney Holder, where he does not get authority from the principal, to sell such portion of land, which is

absolutely against the principles of law and amounts to playing fraud with innocent purchasers.

10. Now, on going through the documents of the appellant, it is found that the property fallen to the share of Trilochan Maharana has been sold by its General Power of Attorney Holder, namely, Bata Krushna Maharana, who has sold the same as per share allotted to Trilochan Maharana. Said Trilochan Maharana sold the same to Sasmita Pradhan, who sold the same to the present appellant. It is found that sub-plot Nos.100 & 100A were sold to Sasmita Pradhan, who sold an area of Ac.0.031 decimals of the same to the present appellant. The trace map of the Sale Deed of Sasmita Pradhan and the present appellant show that the plot fallen to the share of Trilochan Maharana has been sold. But, the said plot has been sold by the Power of Attorney Holder of Sasanka Sekhar Mishra to respondent No.1, as revealed from the trace map. On the other hand, prima facie it appears that schedule 'B' land has been originated from schedule 'A' land. Of course, this is not the final opinion, as in the trial the same is to be decided after proper demarcation of the plot. Since both the parties are dragging each other and are only dancing on the toes of Power of Attorney Holders, who are none else but land grabbers. Pending such trial, prima facie it is not found that

respondent No.1 has proved the case in his favour that he has got right, title, interest and possession over schedule 'A' property. The Mutation Record of Right or the rent receipt cannot bring any prima facie title or possession, as they are available only basing on the required Sale Deed. So, in my considered opinion, respondent No.1 has not been able to prove prima facie case in his favour. Moreover, balance of convenience lies in favour of the appellant, who has got clear documents at this stage to justify her vendor's right, title, interest and possession and also some of her thereon. If injunction is not granted as per the prayer of respondent No.1, there will be no irreparable loss or injury, as he has not come with clean hands. On the other hand, the order of status quo against the appellant will cause injury, which cannot be adequately compensated in terms of money, as prima facie she has got right, title, interest and possession over schedule 'B' property, which is apparently a portion of schedule 'A' property. Hence, all the ingredients are not proved by respondent No.1 in his favour. When respondent No.1 does not prove to pass an order of injunction in his favour and against appellant and respondent No.2, the impugned order of status quo passed by the learned Civil Judge (Jr. Division), Bhubaneswar is not valid in law. On the other hand, the

learned Court below has not gone through the documents produced at this stage, for which the order assailed in this appeal is not correct, legal and proper and thus the same warrants interference by this Court. Hence ordered :

**O R D E R**

The appeal is allowed on contest without cost. The order dated 16.09.2013 passed by the learned Civil Judge (Jr. Division), Bhubaneswar in I.A. No.141 of 2013, arising out of C.S. No. 146 of 2013, is hereby set aside.

**District Judge, Khurda  
at Bhubaneswar.**

15.09.2014.

Dictated, corrected by me and pronounced in the open Court this day the 15<sup>th</sup> September, 2014.

**District Judge, Khurda  
at Bhubaneswar.**

15.09.2014.