

(2024) 06 OHC CK 0150**Orissa High Court****Case No:** CMP No. 290 Of 2024

Parbati Sahoo

APPELLANT

Vs

Purna Chandra Sahoo And
Another

RESPONDENT

Date of Decision: June 28, 2024**Acts Referred:**

- Code of Civil Procedure, 1908 - Order 39 Rules 1, Order 39 Rules 2

Hon'ble Judges: K.R. Mohapatra, J**Bench:** Single Bench**Advocate:** Soumya Ranjan Pati, M.K. Rath**Final Decision:** Dismissed**Judgement**

K.R. Mohapatra, J

1. This matter is taken up through hybrid mode.
2. Order dated 5th February, 2024 (Annexure-4) passed in F.A.O. No.37 of 2023 is under challenge in this CMP, whereby learned District Judge, Puri modified the order dated 17th May, 2023 passed by learned Senior Civil Judge, Pipili in I.A. No.65 of 2021 (arising out of C.S. No.169 of 2021) and directed that Opposite Party Nos.1 & 2 in I.A. No.65 of 2021 are temporarily restrained to alienate the suit property covered under Khata No.509 only.
3. Mr. Pati, learned counsel for the Petitioner submits that the suit plots are covered under two khatas, namely, Khata Nos.509 of Mouza Rathapurusottampur and Khata No.379 of Muninda Mouza in the district of Puri. Although the suit properties are ancestral in nature, their father, namely, Suratha Sahoo sold the same to the Opposite Parties. Admittedly, the Petitioner and Opposite Parties are children of Suratha

Sahoo. Without knowledge of the Petitioner, Suratha Sahoo sold the land under Khata No.379 to his sons, namely, the Opposite Parties. Thus, a suit for partition has been filed along with a prayer for declaration that the sale deed executed by her father in the name of Opposite Parties is illegal, fraudulent, null and void. A prayer for permanent injunction is also made in the plaint. Since the Opposite Parties made an attempt to dispossess the Petitioner from the suit property and to alienate the same, an application under Order XXXIX Rules 1 and 2 CPC was filed in I.A. No.65 of 2021. Learned trial Court considering the matter in its proper perspective, restrained the Opposite Parties from alienating the suit property and to dispossess the Petitioner from the suit land till disposal of the suit. Assailing the same, the Opposite Parties preferred F.A.O. No.37 of 2023. Learned appellate Court without taking into consideration the fact that the property is ancestral in nature, modified the order passed by learned trial Court and confined the restraint order to Khata No.509 only. Assailing the said order, this CMP has been filed.

4. It is his submission that learned appellate Court while adjudicating the matter misconstrued *prima facie* case with *prima facie* title. While adjudicating an application under Order XXXIX Rules 1 and 2 CPC, a *prima* case has to be looked into not a *prima facie* title. Learned appellate Court holding that the Opposite Parties have *prima facie* title over Khata No.379, vacated the order of injunction by the impugned order under Annexure-4. He further submits that when the validity of the sale deed by virtue of which the Opposite Parties allegedly acquired title over the suit property is in question, the *lis* should be protected till disposal of the suit. Considering the same, learned trial Court had rightly passed the order of injunction. But, learned appellate Court misconstruing the matter both on fact and law, passed the impugned order. Hence, the impugned order under Annexure-4 is liable to be set aside and the order passed by learned trial Court should be confirmed.

5. Mr. Rath, learned counsel for the Opposite Parties vehemently objects to the above. It is his submission that Khata No.379 was recorded in the name of Suratha Sahoo, their father in Consolidation R.O.R. It was his self-acquired property. He purchased Khata No.379 from Sadei Sahoo by virtue of a Registered Sale Deed for valuable consideration and was delivered with possession. Thus, he had absolute right over the suit property. Learned trial Court confusing it to be the ancestral property, passed a restraint order. Due to legal necessity of their father, he sold the land to the Opposite Parties by virtue of the Registered Sale Deed dated 3rd October, 2019 and delivered possession. Since then, the Opposite Parties are in exclusive possession over the same exercising their right, title and interest thereon. Learned appellate Court discussing the matter in detail, vacated the restrained order so far as Khata No.379 is concerned. Thus, learned appellate Court has committed no error in passing the impugned order under Annexure-4.

6. Upon hearing learned counsel for the parties and on perusal of the record, this Court finds that the relationship between the parties is not disputed. The Plaintiff-Petitioner is the daughter of Suratha Sahoo and the Opposite Parties are his sons. Suratha Sahoo has purchased Khata No.379 by virtue of a Registered Sale Deed from Sadei Sahoo. Thus, *prima facie*, it appears that Khata No.379 is the self-acquired property of Suratha Sahoo. In consolidated R.O.R., said Khata No.379 is recorded exclusively in the name of Suratha Sahoo. There cannot be any doubt that consolidation R.O.R. is a document of title. It is alleged by the Opposite Parties that due to legal necessity, their father sold the property in their favour by virtue of a Registered Sale Deed dated 3rd October, 2019 and delivered possession. Thus, *prima facie*, it appears that Khata No.379 is not an ancestral property, as held by learned appellate Court. So far as Khata No.509 is concerned, the same appears to be an ancestral joint family property. Thus, learned appellate Court has committed no error in confining the relief granted by learned trial Court in respect of Khata No.509 only.

7. On verification of the record, it appears that learned appellate Court has not observed anything with regard to *prima facie* title. It has only observed that Khata No.379 is the self-acquired property of Suratha Sahoo. This Court finds no infirmity in the said observation, as the Consolidation R.O.R. was published in the name of Suratha Sahoo exclusively. During his life time, he had sold the land to the Opposite Parties. Thus, this Court does not find any infirmity in the impugned order under Annexure-4.

8. Accordingly, the CMP being devoid of any merit stands dismissed.

Urgent certified copy of this order be granted on proper application.

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