

IN THE COURT OF CIVIL JUDGE(JD),1ST COURT, CUTTACK

Present: - Ms. Sheetal Barsha, B.A.LL.B., LL.M.

Civil Judge, (Junior Division) First Court, Cuttack.

I.A No. 01/2022

(Arising out of C.S No. 764 of 2022)

Lokanath Swain, aged about 52 years,

S/o. Late Basudev Swain, resident of Deulasahi,

P.O- Tulasipur, P.S- Bidanasi, Dist- Cuttack.

Plaintiff/Petitioner..

..Vrs..

1. Trilochan Swain, aged about 66 years,
S/o. Late Kailash Chandra Swain,
At/P.O- Ragadipada, P.S- Badamba,
Dist- Cuttack.
2. Dillip Kumar Parida, aged about 49 years,
S/o. Gyana Chandra Parida, Vill- Kulakalapada,
P.O- Kalapada, P.S- Cuttack sadar, Dist- Cuttack.
3. Soumya Ranjan Jena, aged about 38 years,
S/o. Late Brajabihari Jena,
At/P.O- Gatiroutapatna,
P.S- Chauliaganj, Dist- Cuttack.

.....Opposite parties..

Counsel for the petitioner :- Adv. Sri J.J Dash & associates

Counsel for the O.Ps No. 1 & 2 :- Adv. Sri M.P Sahoo & associates

Counsel for the O.P No. 3 :- Adv. Sri B.B Biswal & associates

Date of conclusion of argument : - 04-01-2023

Date of Order : - 16-01-2023

ORDER

1. This order arises disposing of the petition U/O. 39 rule 1 & 2 of CPC, Read with Sec. 151 filed by the plaintiff/petitioner with a prayer for restrain order against the O.Ps not to consturct the boundary wall and to come upon and interfere with the peaceful possession of the petitioner over the schedule property till disposal of the suit.

2. The fact of the petitioner's case is that the petitioner/plaintiff and defendant no.1 have purchased the suit schedule property bearing sabik khata no. 143, Plot no 268 area Ac 0.760 dec corresponding to Hal consolidation khata no. 320, Plot no. 284 area Ac 0.770 dec of mouza- Madhuban from one Dhurba Charan Jena vide regd. Sale deed no. 4888 dtd. 17/07/1981. After purchasing the suit schedule property the petitioner and defendant no. 1 in the consolidation operation has recorded their name in Hal consolidation khata no. 320, Plot no. 284 area Ac 0.770 dec accordingly consolidation ROR has published in the year 1983 in the name of petitioner and defendant no.1. From the date of purchasing the suit schedule property the petitioner and defendant

no. 1 are in peaceful possession over the suit land. The petitioner and defendant no. 1 have been paying rent to the Tahasil, possessing the same without interference from any quarter. On 12/06/15 the suit schedule land had amicably partitioned between the petitioner and defendant no. 1. The petitioner has allotted south side of the land bearing Plot no. 284 (part) and defendant no. 1 has allotted northern side of the suit land bearing plot no. 284 (part). As per amicable partition petitioner had allotted Ac 0.385 dec towards south side in plot no. 284 and defendant no. 1 has allotted northern side of the suit land bearing plot no. 284 part area Ac 0.385 dec. The defendant no. 1 due to need of money he had sold his share towards northern side of the suit schedule land to the O.P.s/defendants no. 2 to 4 and others by details as per the sketch map attached to the respective regd. Sale deeds. Petitioner remained in possession of his share towards south side of the suit schedule land Ac 0.385 dec. The present petitioner is a BSF employee and serving outside the state and at present posted at Malada in the state of west Bengal. The O.P.s/defendants no. 2 to 4 who are the purchasers from defendant no. 1 taking advantage of his absence beyond their share forcefully by engaging local hooligans has thrown out the cement pillar, digging the hole for construct the boundary wall by encroaching 20 ft towards petitioner side from east to west. The petitioner on 21/08/22 came to his native place and when he moved to his land, he saw that the O.P.s were digging hole and filling sand in the petitioner side and after knowing the facts he asked the O.P.s about removal of cement pillar and illegal digging of hole for construction

of boundary wall towards south side. Although the O.P.s have no right, title or interest over the said property which has allotted to the petitioner but the O.P.s are illegally digging the hole and filling the sand for construction of boundary wall by encroaching towards the plaintiff side. Hence, this case.

3. On the other hand, even though the O.P. no.3 has appeared in this case but in spite of several adjournments did not file any objection. The O.P. no. 1 & 2 have appeared and filed the show cause stating that the present IA is not maintainable and the petitioner has not come with clean hands and the facts as stated in the IA are false and fabricated. They further stated that the petitioner and the defendant no.1 both brothers being the absolute owner are in possession of the property, khata no. 320, plot no.284 measuring an area of Ac 0.770 dec and plot no. 283 measuring an area of Ac 0.370 dec of total area Ac 1.140 dec since from their date of purchase till the year 2015. From this year both of them had started alienating their property for their personal gain and handover physical possession to different purchasers at different times from the above plot no. 284 measuring area of Ac 0.770 dec. i.e. Anupama Rout purchased 1800 sqft. on dtd. 17/10/15, Dillip Kumar Parida (O.P no. 2) purchased 3000 sqft. on dtd. 17/10/15, Jagajiban Sahoo purchased 3000 sqft. on dtd. 17/10/15, Trilochana Swain purchased 4000 sqft. (In two records of 2000 sqft. + 2000 sqft.) on dtd. 19/01/16. Renuprava Samal purchased 1600 sqft. on dtd. 19/01/16. Soumya Ranjan Jena purchased 1200 sqft. on dtd. 19/01/16 and later on transferred the same piece of land to two

persons namely Subash Chandra Sahoo and Subrata Kumar Sahoo ib dtd. 26/07/21. All these parts of land were transferred through RSD were done by Gyana Ranjan Swain with one enclosed consent affidavit by Lokanath Swain from his share of land measuring area Ac 0.385 dec which is one of the admitted fact by the plaintiff and since then the physical possession was handed over to the purchasers and possession was taken by the purchasers with proper built up demarked boundaries. There is one road in the southern side as per the sketch, which approximately width somewhere as 19 fts or 18 fts or any other but not completely parallel throughout the length of the road approximately up to 145 fts. On mathematical calculation it can be concluded that the total sold land area to the above six purchasers in addition to that of the demarcated road land area given by the parties, in grand total area is less than the total shared received area of Gyana Ranjan Swain i.e. out of measured area Ac 0.385. Therefore the question of encroachment by the O.P.s strictly denied. It is fact that the O.P.s started sand filling in the road and in their possession land areas in the 1st and 2nd week of the month of April, 2022 by hiring the local vehicles. Hence the I.A is not maintainable and the same is liable to be rejected.

4. The law is well settled that before the order of injunction is passed the Court must be satisfied that a prima facie case is made out by the plaintiff including on the question of maintainability of the suit and the balance of convenience in his favour and refusal of injunction would cause irreparable loss to her.

5. During course of hearing learned counsel for the petitioner submitted in support of the averments in the plaint and the I.A petition. He submitted that the petitioner/plaintiff and defendant no.1 have purchased the suit schedule property bearing sabik khata no. 143, Plot no 268 area Ac 0.760 dec corresponding to Hal consolidation khata no. 320, Plot no. 284 area Ac 0.770 dec of mouza- Madhuban from one Dhurba Charan Jena vide regd. Sale deed no. 4888 dtd. 17/07/1981. Accordingly the Hal consolidation ROR bearing khata no. 320, Plot no. 284 area Ac 0.770 dec has published in the year 1983 in the name of petitioner and defendant no.1. On 12/06/15 the suit schedule land had amicable partitioned between the petitioner and defendant no. 1 and the petitioner has allotted south side of the land bearing Plot no. 284 (part) and defendant no. 1 has allotted northern side of the suit land bearing plot no. 284 (part). As per amicable partition petitioner had allotted Ac 0.385 dec towards south side in plot no. 284 and defendant no. 1 had allotted northern side of the suit land bearing plot no. 284 part area Ac 0.385 dec. In order to support his claim, the petitioner has filed the certified copy of ROR bearing Khata No. 320, Plot No. 283 measuring area Ac.0.370 dec and Plot No. 284 measuring area Ac.0.3895 dec. stands recorded in the name of the Lokanath Swain, the plaintiff and Gyana Ranjan Swain, the defendant no.1 and the unregistered family settlement deed between the plaintiff and the defendant no.1. Perused the documents and in view of the above facts it can be said that the petitioner has made out a prima facie case in his favour.

So far as balance of convenience and irreparable loss is concerned the Court has weighed comparative mischief and hardship which is likely to be caused to the parties in case of grant or refusal of temporary injunction. In the present case the petitioner stated that from the date of purchasing the suit schedule property the petitioner and defendant no.1 are in peaceful possession over the suit land. But the O.P.s/defendants no. 2 to 4 who are the purchasers from defendant no. 1 taking advantage of the absence of petitioner have forcibly thrown out the cement pillar, digging the hole for construct the boundary wall beyond their share by encroaching 20 ft towards petitioner side from east to west. But the O.P.s have no right, title or interest over the said property which has allotted to the petitioner. Whereas the O.P. No.1 and 2 contended that the O.P.s purchased the parts of land from the Defendant no.1 which were transferred through RSD executed by the defendant no.1 with one enclosed consent affidavit by the petitioner from his share of land measuring area Ac 0.385 dec which is one of the admitted fact by the plaintiff and since then the physical possession was handed over to the purchasers and possession was taken by the purchasers with proper built up demarked boundaries. There is one road in the southern side as per the sketch, which approximately width somewhere as 19 fts or 18 fts or any other but not completely parallel throughout the length of the road approximately up to 145 fts. On mathematical calculation it can be concluded that the total sold land area to the above six purchasers in addition to that of the demarcated road land area given by the parties, in grand total area is

less than the total shared received area of Gyana Ranjan Swain i.e. out of measured area Ac 0.385. But the O.P.s have not filed a single scrap of document in support of their claims.

Examining all the materials placed before this court, it is observed that, even though it is the admitted fact of both the parties that the present O.P.s have purchased the part of the IA schedule land from the Defendant no.1 however neither party has submitted any Regd. Sale deed of the O.P.s. Further the O.P.s claims that they have taken possession of their purchased land with proper built up demarked boundaries, but no demarcation report in respect of the IA schedule property is filed before this court. Therefore, in this circumstance, this court is of the view that it is not appropriate to grant the final relief of injunction at this stage of the proceeding, without allowing the parties to adduce evidences to prove their respective cases. However, it is the settled principle of law that the main purpose of an interim order is to protect the *lis* during *lis-pendens* so as to prevent future injury to any party. Therefore, for the protection and preservation of the IA schedule property and to avoid the multiplicity of proceedings, this Court thinks it fit and proper that the interest of justice would be best served if both the sides are directed to maintain the status-quo in respect of the I.A. schedule property till final disposal of the suit.

Hence, it is ordered: -

ORDER

The Interim Application be and the same is allowed in part on contest against the Opp. Parties No. 1 & 2 and on ex-parte against the O.P no. 3 but without any cost. Both the parties are directed to maintain status quo over the I.A. schedule property till conclusion of the original suit.

Civil Judge (Jr.Divn.)1st Court Cuttack

The above order is typed to my dictation, corrected by me and pronounced in the open court today this 16th day of January, 2023.

Civil Judge (Jr. Divn.)1st Court, Cuttack