

**B.K.PATEL, J.**

W.P.(C ) NO.10802 OF 2011 (Decided on 29.7.2011)

**PRAMOD KUMAR NAYAK**

.....Petitioner.

.Vrs.

**SRIPATI CHARAN BADAJENA**

.....Opp.Party.

CIVIL PROCEDURE CODE, 1908 (ACT NO.5 OF 1908) – ORDER 39, RULE 1 & 2.

For Petitioner - M/s.S.K.Padhi, M.Padhi, A.Das, B.Panigrahi &  
S.S.Mohanty.

For Opp.Party - M/s. Akhil Mohapatra, J.M.Rout &  
S.C.Nayak.

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**B.K.PATEL, J.** In this writ application, petitioner has assailed legality of order dated 9.3.2011 passed by the learned District Judge, Khurda at Bhubaneswar in F.A.O.No.110 of 2010 by which order dated 6.10.2010 passed by the learned Civil Judge(Junior Division),Bhubaneswar in I.A.No.647 of 2009, arising out of C.S.No.478 of 2009, rejecting petitioner's application under Order 39 Rules 1 and 2 read with section 151 of the C.P.C. for temporary injunction was confirmed.

2. C.S.No.478 of 2009 is a suit for declaration and permanent injunction filed by the plaintiff against opposite party and others. Petitioner is the sole plaintiff and opposite party is the defendant no.1 in the suit. Prayer of the plaintiff in the suit is to:

“a)declare that Natabar Samantray was alive on 17.2.84 and death certificate issued on 1.7.2008, bearing Registration No.288 shown in the Registrar, Birth & Death maintained in the P.H.C., Mendhasal showing date of death as on 10.11.83 of said Natabar Samantray is void under law,

(b)that the defendant no.1 to 18 be permanently restrained from interfering in any way with plaintiff's possession of the suit lands and from entering upon any part of the same forcibly or from creating any mischief whatsoever in respect of the suit land.”

3. Suit land measuring area of Ac.0.182 decimals is a part of suit plot no.252/1040 under Khata No.105 (total area A.1.225 decimals) originally belonging to late Natabara Samantray. Plaintiff's case is that said Natabara Samantray sold entire land in the suit plot in favour of pro forma defendant Laxmidhar Paikaray by executing Registered Sale Deed dated 17.2.1984. Plaintiff purchased the suit land from said Laxmidhar Paikaray and is in possession on the strength of Registered Sale Deed dated 23.2.1996 executed by power of attorney of pro forma defendant. Defendant nos. 2 to 18 are legal heirs of late Natabar Samantray. It is alleged that defendant nos. 2 to 18 in connivance with defendant no.1 managed to fraudulently obtain death certificate from Executive Magistrate, Bhubaneswar in Misc.Case No.1946 of 2008 indicating the date of death of

late Natabar Samantaray as 10.11.1983 though said Natabara Samantray was alive and did execute sale deed dated 17.2.1984 in favour of pro forma defendant. Thereafter, defendant no.1 attempted to trespass into the suit plot including the suit land which was under peaceful possession of the plaintiff. In I.A. No.647 of 2009 plaintiff made prayer for grant of temporary injunction restraining defendant no.1 from interfering with his possession over and entering into the suit land.

4. Defendant no.1 filed written statement resisting plaintiff's claim. It is contended that the suit for permanent injunction simplicitor without seeking declaration of right, title and interest over the suit land is not maintainable. Disputing the very execution of registered sale deed by late Natabar Samantray in favour of pro forma defendant, it is pleaded that said Natabara Samantray died on 10.11.1983. Plaintiff's claim to the suit land is thus resisted on the ground, *inter alia*, that sale deed dated 17.2.1984 purported to have been executed by the said Natabara Samantray in favour of plaintiff's vendor is a fraudulent and void document. It is asserted that after due enquiry death certificate has been issued to the effect that late Natabara Samantray died on 10.11.83. It is also asserted that defendant no.1 has right, title, interest and possession over the suit land on behalf of successors-in-interest of late Natabara Samantaray by virtue of Registered Power of Attorney dated 9.11.2009.

5. In assailing the orders passed by learned courts below refusing to issue temporary injunction, it was contended by the learned counsel for the petitioner that the contents of death certificate obtained 25 years after death should not have weighed with the learned courts below in refusing to protect plaintiff's right, title and interest over the suit land acquired by virtue of Registered Sale Deed. No legal action having been initiated by defendant no.1 assailing the Registered Sale Deed executed by late Natabara Samantaray in favour of pro forma defendant, plaintiff is entitled to temporary injunction restraining the defendant no.1 from interfering with plaintiff's peaceful possession over the suit land. It is contended that both the learned courts below held the plaintiff to have a *prima facie* case. It is argued that petitioner being in possession over the suit land, balance of convenience is in his favour and in case defendant no.1 is allowed to disturb the balance of convenience, plaintiff shall be put to irreparable loss. Referring to decisions of the Hon'ble Supreme Court in **Prem Singh and others –vrs.- Birbal and others**: (2006) 5 SCC 353 and **Lakhi Baruah and others –vrs.- Padma Kanta Kalita and others** : (1996) 8 SCC 357 as well as some other decisions, it was argued that learned courts below ought to have presumed the genuineness of Registered Sale Deed executed by late Natabara Samantaray until the same was found to be fraudulent.

6. Learned counsel for the opposite party supporting and defending the orders passed by learned trial court and appellate court contended that both the courts below have assigned cogent reasons in support of their concurrent conclusion that the plaintiff is not entitled for temporary injunction. Placing reliance on the decisions of the Hon'ble Supreme Court in **Sadhana Lodh –vrs.- National Insurance Co. Ltd and another** : AIR 2003 SC 1561, **Ranjit Singh –vrs.- Ravi Prakash**: AIR 2004 SC 3892 and **Abdul Razak –vrs.- Mangesh Rajaram Wagle and others** : (2010) 2 SCC 432, it was argued that where a trial Court in a civil suit refused to grant temporary injunction and an appeal against refusal to grant injunction has been rejected, writ petition would lie under Article 227 and not under Article 226 of the Constitution. A mere wrong decision without

anything more is not enough to attract jurisdiction of High Court under Article 226 of the Constitution. The supervisory jurisdiction conferred on the High Courts under Article 227 of the Constitution is confined only to see whether an inferior Court or Tribunal has proceeded within its parameters and not to correct an error apparent on the face of the record, much less of an error of law. In exercising the supervisory power under Article 227 of the Constitution, the High Court does not act as an Appellate Court or the Tribunal. There is no scope to review or re-weigh the evidence upon which the inferior Court or Tribunal purports to have passed the order or to correct errors of law in the decision. It was contended that neither of the learned courts below found any of the three requirements for grant of injunction to be in existence in favour of the plaintiff. Registered Sale Deed of the year 1984 by which late Natabara Samantaray is asserted to have transferred his right, title and interest over the suit plot is a void document. The document being a nullity and void *ab initio*, there is no need of a decree. Death certificate indicating date of death of late Natabara Samantaray as 10.11.1983 has been issued by the competent authority in due discharge of official duty. Therefore, the impugned orders are immune from interference.

7. Having perused the materials on record upon reference to rival contentions, it is apparent that the learned courts below have simply observed that the parties have genuine dispute to be adjudicated. Learned District Judge has rightly observed that parties are at issue regarding genuineness of the sale deed stated to have been executed by late Natabara Samantaray as well as genuineness of death certificate. However, neither of the courts below was satisfied regarding existence of *prima facie* case or balance of convenience in favour of the plaintiff.

8. In **Sadhana Lodh –vrs.- National Insurance Co. Ltd and another** (supra) it has been pointed out that where a trial Court in a civil suit refused to grant temporary injunction and an appeal against refusal to grant injunction has been rejected, the writ petition would lie under Article 227 and not under Article 226 of the Constitution. While exercising supervisory jurisdiction conferred on the High Courts under Article 227 of the Constitution, jurisdiction of the High Courts is confined only to see whether an inferior Court or Tribunal has proceeded within its parameters and not to correct an error apparent on the face of the record, much less of an error of law. In exercising the supervisory power under Article 227 of the Constitution, the High Court does not act as an Appellate Court or the Tribunal. It is also not permissible for a High Court on a petition filed under Article 227 of the Constitution to review or re-weigh the evidence upon which the inferior Court or Tribunal purports to have passed the order or to correct errors of law in the decision. Scope and ambit of writ jurisdiction under Articles 226 and 227 of the Constitution have also been highlighted in the decisions of Hon'ble Supreme Court relied upon on behalf of the opposite party.

9. There is no scope for the petitioner to avail any benefit out of the fact that no action has been brought so far to assail the sale deed purported to have been executed by late Natabara Samantaray in the year 1984. Case of the defendant no.1 is that late Natabara Samantaray never executed the sale deed. He died much prior to the date of alleged execution of sale deed. It is categorically contended that sale deed purported to have been executed by late Natabara Samantaray is a void document. In **Prem Singh and others –vrs.- Birbal and others** (supra), relied upon by the learned counsel for the petitioner, it has been pointed out that when a document is a nullity and void *ab initio*,

there is no need of a decree for setting aside the document. In fact, being well aware of the position, plaintiff has instituted the present suit. Plaintiff has filed the suit only for declaration with regard to death certificate and for permanent injunction. He has not prayed for relief of declaration of right, title and interest over the suit land. Validity of sale deed purported to have executed by late Natabara Samantaray is dependent upon the validity of the death certificate. It is not disputed that the death certificate has been issued by competent authority. Plaintiff is yet to bring on record any circumstance which would undermine the presumptive value attached to the certificate in any manner. Both the learned courts below have come to the conclusion that it would not be proper to adjudicate regarding validity of the death certificate while considering the application for temporary injunction. The dispute has to be adjudicated in the suit on the basis of evidence adduced in trial. The findings and conclusion appear to be reasonable.

10. Moreover, in course of hearing it was brought to the notice of the Court that pro forma defendant Laxmidhar Paikaray has instituted W.P.(C) No.8958 of 2010 before this Court assailing the genuineness of the death certificate. By the order dated 3.5.2011 passed in W.P.(C) No.8958 of 2010 it has been observed that issuance of death certificate shall be subject to the result of the writ petition.

11. That apart, in a number of authoritative pronouncements, the Hon'ble Supreme Court has disapproved interference by superior courts with the orders under Order 39, Rule 1 of the C.P.C. passed by subordinate courts. In this connection, decisions in **The Municipal Corporation of Delhi –vrs.- Suresh Chandra Jaipuria** : AIR 1976 SC 2621 and **The Saharanpur Co-operative Cane Development Union Ltd., and others –vrs.- The Lord Krishna Sugar Mills Ltd. and others** : AIR 1973 SC 1451 may be referred to. Even an appellate court has no jurisdiction to substitute its own discretion with the judicial discretion exercised by the trial court simply because it is reasonably possible to take another view of the fact of the case. It has been held by this Court in **Bhaskar Chandra Sahu and another –vrs.- Honnu Sahu and another** : (XXIV) 1958 CLT 269 that granting of temporary injunction is at the discretion of the trial judge. Once the judicial discretion is exercised, the appellate court ought not to set it aside lightly.

12. For the reason stated above, there appears no ground warranting interference with the impugned orders by invoking writ jurisdiction. There is no merit in the writ petition. Accordingly, the writ petition stands dismissed.

Writ petition dismissed.