

ORISSA HIGH COURT: CUTTACK

F.A.O. NOS.133 & 134 OF 2013

From a common order dated 12.3.2013 passed by the learned Civil Judge (Senior Division), Jajpur Road in I.A. Nos.152 of 2011 and 48 of 2012 arising out of C.S. No.289 of 2011.

In F.A.O. No.133 of 2013

Pratima Sahoo Appellant

V e r s u s

Surendra Kumar Sahoo & others Respondents

For Appellant : M/s. B.H. Mohanty, D.P. Mohanty,
J.K. Bastia, R.K. Nayak, T.K. Mohanty,
P.K. Swain & M. Pal

For Respondents : Mr. T. Barik

In F.A.O. No.134 of 2013

Pratima Sahoo Appellant

V e r s u s

Pravat Kumar Parida Respondent

For Appellant : M/s. B.H. Mohanty, D.P. Mohanty,
J.K. Bastia, R.K. Nayak, T.K. Mohanty,
K.P. Parija, P.K. Swain & M. Pal

For Respondent : M/s. A.K. Mohapatra (I), S.Ch. Rath
& I. Khan

P R E S E N T :

THE HONOURABLE MR. JUSTICE RAGHUBIR DASH

Date of hearing : 16.04.2014

Date of judgment : 25.04.2014

R. DASH, J. Both the appeals arise out of a common order dated 12.3.2013 passed by the learned Civil Judge (Senior Division), Jajpur Road in I.A. Nos.152 of 2011 and 48 of 2012 arising out of C.S. No.289 of 2011.

2. The appellant is the plaintiff-petitioner before the learned lower court. She filed the suit for declaration of a registered deed of partition and four sale deeds, which are consequential to the partition deed, as illegal and not binding on her, besides praying for partition of the suit schedule property determining her legitimate share therein.

3. The case of the Plaintiff is that late Balaram Sahoo (D-1) has two sons and three daughters. Plaintiff is one of her daughters. The suit properties are the ancestral properties of late Balaram. The same were allotted to him on the basis of a prior partition. His two sons Surendra and Manoranjan (D.2 and D.3) managed to obtain from their father a registered deed of partition on 2.7.2011. As per the partition deed specific properties out of the suit properties were allotted in their respective shares. After the partition Balaram executed different sale deeds in favour of his two sons and wife of his son Manoranjan (D.4) alienating entire of the property allotted in his share. Thus, there was no property left in the hands of Balaram to pass on to their daughters. Hence, this suit.

4. Balaram Sahoo was alive when the suit was filed. He was arrayed as D.1 but during pendency of the suit he has died. During pendency of the suit a part of the suit properties has been sold to one Pravat Kumar Parida under a registered sale deed executed by Balaram allegedly at the instance of his sons. Therefore, said Pravat Parida has been arrayed as D.13. This part of the property consists of one Cinema Hall and four shop rooms. According to the plaintiff, the Cinema Hall and the shop rooms are running business. But after purchasing the properties Pravat Parida started dismantling the roof of the Cinema Hall. Prior to arraying Pravat Parida as D.13 the Plaintiff had filed I.A. No.152 of 2011 seeking interim injunction against Balaram, Surendra, Manoranjan and wife of Manoranjan. But after arraying D.13, another I.A. bearing No.48 of 2012 was filed. As already stated, both the I.As. have been disposed of by the impugned order. Balaram Sahoo, his sons and daughter-in-law took the stand that Balaram Sahoo being the absolute owner as per the prior partition, which took place in 1956, his daughters are not entitled to get any share in the suit property. That apart, the partition amongst the father and the sons under the impugned registered deed of partition took place before the Hindu Succession (Amendment) Act, 2005 came into force. Therefore, it is asserted, the daughters cannot claim share from the suit properties.

Pravat Parida, D.13 has taken the stand that Balaram Sahoo sold a part of the suit property to him under registered sale deed No.1279 dated 1.5.2012 as he was in need of money for his treatment and the possession having been delivered to him, he is in physical possession of the properties alienated to him. The Cinema Hall standing on the property purchased by him being in dilapidated condition needs immediate demolition. However, it is not in dispute that Pravat Parida purchased the property during pendency of the suit.

5. Learned court below held that the ancestral property allotted to the share of Balaram Sahoo in the earlier partition remained as ancestral property of the joint family headed by him and in view of Hindu Succession (Amendment) Act, 2005 Balaram's daughters became coparceners in respect of the said property. Therefore, it is held, the petitioner has subsisting interest in the suit properties. As such, the impugned partition deed dated 2.7.2011 between Balaram and his two sons excluding the daughters of Balaram Sahoo prima facie appears to be unsustainable. But since the manager of a joint Hindu family has power to alienate the joint family properties for a legal necessity or for the benefit of the estate and such alienation binds all the coparceners, the sale transactions made by Balaram Sahoo cannot be prima facie viewed as illegal. Having observed thus, the learned court below took the view that a

direction to maintain status quo with regard to the suit property excluding the property sold under the four impugned sale deeds would subserve the interest of justice and that unless the further alienation of the suit properties, which are covered by the four sale deeds, are preserved and protected by any restraint order it might lead to multiplicity of proceedings causing hardship to the petitioner. Therefore, the learned court below disposed of both the I.As. directing the parties to maintain status quo over the suit property excluding the property sold under the four sale deeds with further direction that transferees under the sale deeds shall not alienate the property covered under the sale deeds during pendency of the original suit. In addition to such direction, the learned court below has called upon the O.Ps. to furnish undertaking that in respect of any construction raised during pendency of the suit none of them would claim any equity in the event the petitioner succeeds in the original suit.

6. On behalf of the petitioner it is submitted that learned court below should not have excluded the properties covered under the impugned sale deeds from the purview of the order of status quo. Learned trial court appears to have excluded the properties covered under the sale deeds on the ground that as manager of the joint Hindu family Balaram was having the power to alienate joint family properties for legal necessity and such alienations bind all the coparceners. But in the case in hand it is found from the averments

that during pendency of the suit and while an interim order passed by the learned lower court asking the parties to maintain status quo of the suit properties was in operation, the father has alienated valuable properties to D.13. So far the other sale deeds impugned in the suit are concerned, it is found that soon after the partition amongst the father and the sons vide registered partition deed dated 2.7.2011, the father has alienated entire of the properties allotted in his share to his sons and daughter-in-law. Under such circumstances and at this stage it is unwise to opine that the alienations made by the father was for legal necessity. Since all the three requirements for grant of the interim relief prayed for by the appellant-petitioner are found by the learned trial court to have been satisfied, which this Court finds to be correct, the parties to the partition suit should not be allowed to raise any permanent construction on any portion of the suit land until the suit properties are partitioned by metes and bounds. The parties may undertake repairing work in respect of the existing buildings and structures with the prior permission of the Court. As regards the demolition of the Cinema Hall it is claimed by the respondents to be in a dilapidated condition, the same may be undertaken but only with the leave of the Court and such leave may be granted after due enquiry into the assertion made by the appellant that the Cinema Hall is running business.

7. With the aforestated observation, this Court is of the considered view that the parties to the suit should be asked to maintain status quo in respect of the entire of the suit property till final disposal of the suit. Accordingly, both the F.A.Os. are allowed. The impugned order is modified to the extent that the parties shall maintain status quo in respect of the entire of the suit property including the properties shown to have been alienated under the impugned sale deeds. Consequently, the impugned order directing the O.Ps. to furnish undertaking not to claim any equity stands set aside.

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R. Dash, J.