



IN THE HIGH COURT OF ORISSA AT CUTTACK

C.M.P. No.550 of 2021

I.A. No.1329 of 2022

An application under Articles 226 and 227 of the Constitution of India)

Debraj Mohanty & Others* **Petitioners*

-Versus-

Labani Dei* **Opp. Party*

Advocate(s) appeared in this case:-

For Petitioner : Mr. G. Mukherji, Sr. Advocate with
Mr. A. Mishra, Advocate

For Opp. Parties : Mr. M.K. Pati, Advocate

CORAM: JUSTICE SASHIKANTA MISHRA

J U D G M E N T
22nd of August, 2025

SASHIKANTA MISHRA, J.

The petitioners are defendants in C.S. No.745 of 2019 pending in the Court of learned Civil Judge (Senior Division) Jajpur. In the present application, they question the correctness of order dated 07.09.2021 passed by learned District Judge, Jajpur in FAO No.4 of 2020. Said



FAO was filed by the present Opposite Party-Plaintiff against the order dated 18.01.2020 passed by the Trial Court in I.A. No.342 of 2019 rejecting her application for injunction. Learned District Judge, by the impugned order, set aside the order of the Trial Court and allowed the appeal by restraining the defendants from raising any further construction over the suit land till disposal of the suit.

2. The facts, relevant only to decide the present application are, the plaintiff has filed the aforementioned suit seeking declaration of her right, title and interest along with that of proforma-defendant Nos.4 to 9 over the suit property and that preparation of MS ROR in respect of 'A' Schedule Land in the name of defendant Nos.1 to 3 is wrong and illegal. It is claimed that the suit property was originally recorded in the name of Sakhi Dei in C.S. R.O.R. of 1928. Said Sakhi Dei alienated Lot 1 and 2 property of the schedule to one Laxmidhar Baisakh vide RSD dated 01.10.1931. Said Laxmidhar Baisakh sold the property to one Yasobant Mohanty vide RSD dated 22.07.1944. Lot No.3 property of the schedule was purchased by one



Krushna Chandra Pati from Sakhi Dei as auction purchaser on 16.09.1946 in an execution case. Krushna Chandra Pati sold the said property to Yasobant Mohanty vide RSD dated 27.06.1949. Thus, Yasobant Mohanty became the owner of the schedule-A property. The plaintiff and proforma-defendant Nos.4 to 8 being the successors of Yasobant Mohanty filed the suit for declaration and correction of MS ROR.

3. The case of the defendant Nos.1 to 3 as per their written statement and counter claim is that the so called sale deeds had never been acted upon and that the property stands recorded in their names in the Hal ROR. Sakhi Dei had acquired Ac.0.43 and 5 Kadi land vide RSD dated 22.12.1910. She never sold her property to any person. The sale deeds claimed to have been executed by her are fictitious and void documents. Defendant Nos.1 to 3 are the successors of Sakhi Dei. The Hal ROR was therefore, prepared in their names, which was never challenged by the plaintiff or any other party at any point of time. The defendants filed Demarcation Case No.37 of 2019 before the Tahasildar, Rasulpur and accordingly



demarcation was done on 02.11.2019. The plaintiff and the proforma-defendants have no manner of right over the suit property. On the other hand, defendant Nos.1 to 3 have constructed a building over the suit land up to 5 feet from the plinth level and for further construction have stacked the construction materials. The plaintiff initiated a criminal proceeding against the defendants for which they have stopped construction.

4. The plaintiff also filed an application being I.A. No.342 of 2019 to restrain the contesting defendants from entering upon the suit property, from raising any construction, putting fence and from changing the nature and character of the suit land. The contesting defendants filed objection claiming that they are the lawful and recorded owners of the suit property being the grandsons of Sakhi Dei. The so called sale transactions effected by Sakhi Dei are claimed to be false and fabricated. The sale deeds were never acted upon. The mother of the contesting defendants, Laxmi Mohanty and the defendants filed Appeal Case No.1602 of 2001 in the Court of Settlement Officer against Kanhu Charan Mohanty, husband of the



plaintiff. Said appeal was allowed. In view of the order passed in the appeal the Hal ROR of the disputed property was prepared in favour of the defendants and their mother in the year 2005, which was never challenged before any forum. The defendants have constructed a building up to five feet from the plinth level and have stacked construction materials like bricks, cement, iron rod, chips and sand for further construction. The plaintiff or the proforma-Opposite Parties are not in possession.

5. After hearing both sides and on consideration of the pleadings and facts of the case, the trial Court took note of the fact that the original ownership and possession of Sakhi Dei is an admitted fact. Further, in MS ROR, the suit land stands recorded in the names of the contesting defendants. The ROR has presumptive value. On the other hand, the plaintiff has not adduced any evidence that the sale deeds relied upon her were acted upon. The defendants produced rent receipts to show that they are in possession. The Trial Court therefore, held that the plaintiff did not have a prima facie case nor the balance of convenience leaned in her favour, rather while restraining



the defendants, it would cause irreparable loss to them. The I.A. was thus dismissed.

6. The plaintiff carried appeal to the District Court. Learned District Judge held that settlement records do not confer or extinguish title. On the other hand, some of the sale deeds relied upon by the plaintiff are more than thirty years old and therefore, unless declared void they shall be held to have conferred title on the plaintiff. The finding of the trial Court that the sale deeds had not been acted upon was not accepted by the Appellate Court. It was thus held that the comparative mis-chief will be more against the plaintiff if the defendants are allowed to raise further construction. The balance of convenience leans in favour of the plaintiff and she would suffer irreparable loss in case no order of injunction is passed. The appeal was thus allowed by restraining the defendants from raising any further construction till disposal of the suit.

7. Being aggrieved, the contesting defendant Nos.1 to 3 have preferred the present application.

8. Heard Mr. G. Mukherji, learned senior counsel with Mr. A. Mishra, learned counsel for the defendant-



petitioners and Mr. M.K. Pati, learned counsel for the plaintiff-Opposite Parties.

9. Mr. Mukherji would argue that when the disputed property admittedly stands recorded in the name of the defendants, who succeeded to such property by way of inheritance from their grandmother, who was the original recorded owner and said recording was never challenged by the plaintiff or any other party within the period of limitation, the statutory presumption of correctness attached to it cannot be diluted. The plaintiff simply relies on some old sale deeds which were never acted upon. The vendees of the said sale deeds never took any steps to mutate the property in their names, which fortifies the contention that the sale deeds were never acted upon. On the other hand, the trial Court found that the contesting defendants are in possession. They have raised construction up to plinth level and unless they are permitted to raise further construction, it would cause them serious prejudice.

Mr. Mukherji further submits that his clients are ready to swear an affidavit that they would not claim any



equity if permitted to raise construction. Mr. Mukherji has relied upon a judgment of this Court in the case of ***Soubhagya Kumar Dash v. Sulekha Das 2014 (supp.1) OLR 648*** and of the Delhi High Court in the case of ***Raman Hosiery Factory, Delhi and Others Vs. J.K. Synthetics Ltd. And Others AIR 194 Delhi 207*** in support of his contentions.

10. Per contra, Mr. M.K. Pati would argue that when both parties are claiming title, it is necessary to preserve the suit property as it is till disposal of the suit as otherwise, it would create unnecessary legal complications. Mr. Pati further argues that as between the MS ROR and sale deeds, which are more than seventy-eight years old, the later would have more value. In any case, entry in ROR cannot confer title on any party.

11. Before delving into the merits of the rival contentions, it would be apt to mention that having regard to the opposing pleas taken by the parties regarding the stage of construction said to have been made over the disputed property, this Court, by order dated 22.07.2025, on consent of both the parties appointed an Advocate



Commissioner Mr. Tushar Kumar Mishra to physically inspect the suit property and to submit a report regarding the stage of construction. Accordingly, the learned Advocate Commissioner visited the spot and after conducting inspection in presence of both parties submitted a report to this Court along with photographs. Both parties were permitted to inspect the report and the photographs in open Court.

12. As already stated, the fight is between the plaintiff and contesting defendants over title to the suit property. The plaintiff claims to have acquired title along with proforma-defendants from Yasobant Mohanty as his successors. It is common ground that one Sakhi Dei was the original recorded owner. The contesting defendants on the other hand, claim title as successors of said Sakhi Dei, who was their grandmother. While the plaintiffs rely upon several sale deeds, defendants rely upon the recording in the MS ROR. The question of title is a matter to be gone into by the Trial Court in the suit on the basis of evidence to be adduced by both parties. The present consideration is with regard to the question as to whether the contesting



defendants are to be permitted to raise further construction over the suit land. It has been claimed that they have constructed a building up to plinth level. The application for injunction was filed by the plaintiff alleging that on 08.11.2019 the contesting defendants attempted to create disturbance in the smooth possession of the plaintiff over 'A' schedule land and that they are in a mood to raise forcible construction thereon. In the objection filed by the contesting defendants, it is stated that they have constructed a building over the suit land up to 5 feet from the plinth level and for further construction they have purchased bricks, cement, iron rod, chips and sand which are stacked nearby the land.

13. The report of learned Advocate Commissioner mentions that there is no residential house at all and some old walls were found covered with bushes and area is covered with water filled with garbage. According to learned Advocate Commissioner, the walls might have been constructed six to seven years ago. The dimensions of the walls have also been given. Learned Advocate Commissioner has finally opined as follows:-



"I beg to state that neither in I.A. No.304 of 2022 arising out of CMP No.550 of 2021 nor in I.A. No.342 of 2019 arising out of CS No.745 of 2019 of the Court of Learned Civil Judge, Senior Division, Jajpur the petitioner has given the boundary, property descriptions over which the alleged house has been constructed for which I asked the petitioners as well as the Opposite Parties over which portion of Schedule-A property the alleged house has been constructed. The petitioner and their advocate so also the Opposite Party and her advocate stated that the structure has been constructed over some portion of MS Plot No.2601 & 2601/3342 which is corresponding of CS Plot No.2421 of Lot-I of Schedule-A and some portion on Plot No.2602 of Lot-III of Schedule-A but they are unable to specify the area of the said plot in details.

On consent I have taken the photographs prior to clearing the bushes and prior to measurement as it seen there is no residential house at all, and old walls covered with bushes and water and filled with garbage's, I have taken the photograph from each side of the said spot, I don't find that it was used for any purposes in my opinion the said walls might have constructed prior to six and seven years ago. I have submitted the photographs for kind perusal of this Hon'ble Court.

With help of my associates along with the petitioners and Opposite Party's representative Rajesh Pritam Mohanty in order to answer the query of this Hon'ble Court, I measured the spot in presence of the parties, their Advocates, witnesses and general public and the general public also helped a lot for measurement and clearing the bushes.

The spot faced to north, a steel iron rusted gate was hanged with a lock, the length of the gate is 8 ft. 5 inch, the height of the gate is 4 ft. only."

14. It has not been suggested by any of the parties that the report of the Advocate Commissioner is any manner wrong or unacceptable. Thus, this Court finds no reason to not accept the report of the Advocate Commissioner. Further, there is no residential house or half-constructed building over the suit property at all. From the said report it is quite evident that there is no



evidence of any recent construction having been made. There is also no mention of any construction materials being stacked near the place as claimed by the defendants. The photographs taken by the Advocate Commissioner suggest that the walls were constructed some years ago and at any rate, not recently. It is therefore, difficult to accept that there was any recent construction of residential house or building up to plinth level. Further, in the absence of any construction materials lying near the spot it cannot also be said that there is any plan to make any construction recently.

15. While it is true that the Court may, without prejudice to the rights of the parties, permit construction to be made over the disputed property in case substantial construction has been made but where construction is at a nascent stage it would be in the interest of justice to preserve the property as it is till the rights of the parties are finally decided in the ongoing litigation. So, permitting the defendants to make construction would tantamount to giving them license to make full-fledged construction from the initial level. It must be kept in mind that both parties



are claiming title. Though, it is stated that the contesting defendants would not claim equity but if construction is allowed and the same is completed it would lead to unnecessary legal complications and also multiplicity of proceedings. On the contrary, it would enure to the benefit of both parties if the property is preserved as it is. This Court is therefore, of the view that learned District Judge rightly held that construction would change the nature and character of the suit land, which may put the defendants in advantageous possession.

16. As regards the judgments cited by Mr. Mukherji, this Court finds that in **Soubhagya Kumar Das(Supra)**, this Court, taking note of the fact the roof casting had been completed held that a half-constructed house would be beneficial to no party and therefore, balance of convenience lies in completion of the construction. Said case can be easily distinguished from the facts of the present case wherein construction of the walls is at a very initial stage. The case of **Raman Hosiery Factory, Delhi(supra)** can also be distinguished on facts inasmuch as in the said case it was held that issue of the temporary



injunction would disturb a settled state of dealings between the parties.

17. Thus, from a conspectus of the analysis of facts, law, contentions raised and the discussion made, this Court is of the considered view that the First Appellate Court committed no error or illegality in restraining the defendants from making any further construction over the suit land.

18. Resultantly, the CMP is found to be devoid of merit and is therefore, dismissed. The suit being of the year 2021, the trial Court shall do well to try and dispose of the suit as early as possible preferably, within a period of eight months from today.

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Sashikanta Mishra,
Judge

Orissa High Court, Cuttack
The 22nd of August, 2025/ P. Ghadai, Jr. Steno

Signature Not Verified

Digitally Signed
Signed by: PUSPANJALI GHADAI
Designation: Junior Stenographer
Reason: Authentication
Location: High Court of Orissa, Cuttack.
Date: 22-Aug-2025 17:38:24

