



IN THE HIGH COURT OF ORISSA AT CUTTACK

CMP No. 1150 of 2024

(An Application under Articles 226 & 227 of the Constitution of India)

Paramananda Pradhan Petitioner

-Versus-

**Laxmidhar Pradhan @ Rath
and others** Opposite Parties

For Petitioner : Mr. T. Panigrahi, Advocate

For Opp. Parties : Mr. S. Mishra, Advocate

CORAM:

JUSTICE SASHIKANTA MISHRA

JUDGMENT

20th August, 2025

SASHIKANTA MISHRA, J.

The petitioner is the defendant No.1 in C.S. No. 85 of 2015 pending in the Court of learned Civil Judge (Senior Division), Nimapara. In the present application filed under Article 227 of Constitution of India, he questions the correctness of order dated 30.07.2024



passed by the learned Additional District Judge, Nimapara in FAO No. 36 of 2022 whereby, the order of injunction passed by the trial Court was confirmed.

2. The facts, relevant only to decide the present application are that the aforementioned suit has been filed by the plaintiff-Opposite Party for declaration, partition and permanent injunction. It is claimed that the plaintiff has a positive right over the suit schedule property which stands recorded jointly in his name along with others. One Achyut Pradhan has one eighth share. He died living behind his wife, Suma Bewa and two daughters, Biki Dei and Panchei Dei. The successors of Achyut Pradhan, for their legal necessity, executed a registered sale deed dated 19.07.1982 in respect of their share over schedule 'A' and 'B' properties in favour of the plaintiff for consideration followed by delivery of possession. Thus, the plaintiff became entitled to one eighth share of Achyut over the schedule properties and has joint possession along with others. The property under 'A' schedule, being the ancestral joint homestead



and Bagayat land has not been partitioned by metes and bounds. As such, the defendants have no exclusive heritable right to alienate the properties without consent of the plaintiff. The defendant No.1, however obtained registered sale deed dated 25.01.2014 in respect of A and B schedule property from defendant No.2 exceeding his share by practicing fraud. It is therefore, contended that defendant No. 1 has no right, title, interest and possession over the suit land. Defendant Nos. 1 and 2 threatened the plaintiff to interfere with his joint possession and to make illegal construction over the property by evicting the plaintiff on the suit land.

The plaintiff complained before the police but, to no avail. The plaintiff was also requested for partition but defendant No.1 refused and openly threatened to evict the plaintiff and to interfere with his possession. Hence, the suit.

3. The case of defendant No.1 is that the suit is barred for non-joinder of necessary parties i.e., the successors of Achyut. The plaintiff changed his surname Rath to



Pradhan. His father's name is Brahmananda Rath. Taking advantage of the wrong recording in the ROR, the plaintiff has filed the suit by giving a wrong genealogy. The suit property is recorded in the name of Achyut Pradhan. The plaintiff has never been in possession over the suit property nor has any right, title, interest or possession. The suit plots are recorded jointly and the parties have been in amicable possession in separate residence since the time of their ancestors.

4. Pending disposal of the suit, the plaintiff filed an application being I.A. No. 53 of 2015 under Order 39 Rules 1 and 2 with prayer for injunction. Said application was subsequently withdrawn. The plaintiff thereafter moved an application being I.A. 29 of 2022 seeking the following relief:

"It is therefore prayed that the Honourable Court may graciously be pleased to pass an order of Injunction restraining the opposite parties from interfering in the joint possession of petitioner over the schedule 'A' and 'B' properties or from making any illegal construction over which act of kindness, the petitioner shall as in duty bound remain ever pray"



The defendant No.1 filed his objection (mentioned as rejoinder affidavit) to the I.A. filed by the plaintiff. By order dated 19.08.2022, the trial Court allowed the application by directing both parties to maintain status quo in respect of possession and to not make any new construction over the suit land till final disposal of the suit.

5. Being aggrieved, defendant No.1 filed appeal before the District Court being FAO No. 36 of 2022. The lower appellate Court, after going through the facts of the case did not find any infirmity in the order passed by the trial Court so as to interfere. Accordingly, both parties were directed not to make any construction over the suit land and interfere in each other's possession till disposal of the suit. Said order is impugned in the present application.

6. Heard Mr. T. Panigrahi, learned counsel for the defendant No.1 and Mr. S. Mishra, learned counsel appearing for the plaintiff.



7. Mr. Panigrahi would argue that the application for injunction filed by the plaintiff having been withdrawn without any liberty granted by the Court to file a fresh application, his subsequent application claiming the same relief could not have been entertained as the same would be hit by the principle of res-judicata. Mr. Panigrahi elaborates his argument by submitting that the principle of res judicata also applies to interlocutory applications. On merits, Mr. Pangrahi would argue that the finding of the trial Court that sale deed dated 25.08.2014 was not acted upon is not valid and beyond the materials on record. The status of the plaintiff is in itself doubtful, as he is not the son of the Achyut Pradhan but of one Brahmananda Rath and the suit was filed by him taking advantage of the wrong recording made in the Hal settlement records. The plaintiff is neither in possession nor has any right or title over the suit properties. Therefore, any prohibitory order passed against the defendant No.1, who is in possession, would cause him serious prejudice, as he has been residing in a



dilapidated thatched house with his family which needs immediate renovation.

8. Per contra, Mr. Mishra would argue that the application in question having been filed seeking injunction against the defendants, the principle of res judicata would not apply. He would further argue that the dispute relating to paternity of the plaintiff is a matter to be decided during trial on the basis of evidence. It is, prima facie, proved that the property is joint ancestral property of the parties and has been recorded jointly in the names of the co-owners. The plaintiff is also in joint possession along with other co-owners. Defendant No.1 has executed a sale deed in favour of defendant No. 2 exceeding his share by practicing fraud though said sale deed has not yet been acted upon. Since he has been threatening to evict the plaintiff and to make construction over the suit property, an order of injunction is necessary to preserve the property till disposal of the suit.



9. The first question that falls for consideration is whether the application (I.A. 29 of 2022) is hit by the principle of res judicata as similar application (I.A. 53 of 2015) was permitted to be withdrawn by the trial Court without granting any liberty. There is no quarrel with the proposition that the principle of res judicata applies not only to suits disposed of but can also be applied at different stages of the same suit.

10. Coming to the facts of the case at hand, it is seen that in the first application i.e. I.A. 53 of 2015, the plaintiff had sought injunction against the defendants from interfering in his joint possession or for evicting him, alienating any portion of the property or making any illegal construction or changing the nature and character of the suit land. In the subsequent application, as per the prayer already quoted above, the plaintiff asked for an injunction to restrain the defendants from interfering in his joint possession or from making any illegal construction. In the earlier application, it is mentioned under Paragraph-5 that on 24.04.2015 the defendants



gave open threat to the plaintiff to interfere in his joint possession or to evict him from the property by force and to make illegal construction over the same or to alienate any portion to strangers or outsiders.

11. For reason best known to the plaintiff, said application was withdrawn. It is stated at the bar that no liberty was granted. In the subsequent application, the plaintiff has stated that defendant No.1 joined hands with defendant No.2, gave similar threat to the plaintiff on 13.12.2021. The matter was reported to the police station and because of intervention by police, the defendants remained silent for three months. Again, on 16.03.2021, they threatened the plaintiff. Thus, it is evident that the cause of action for moving application for injunction on the first occasion was different from the cause of action for moving the subsequent application. It cannot, therefore, be said that withdrawal of the suit, even sans any liberty, would operate as res judicata for all times to come. More importantly, the earlier application for temporary injunction was not decided on merit and it was



simply withdrawn. Doctrine of res-judicata typically applies to the matters already decided on merit, which is not the state of affairs in the present case. Further, a relief of temporary injunction is interlocutory in nature and may be considered afresh depending on the change of events and circumstances. These orders can never be treated as final decisions on the rights of the parties. In other words, if the situation gets altered significantly since the disposal of the first application, the Court may consider a fresh or new application for temporary injunction.

That apart, when a property is brought into dispute and is pending adjudication, it is necessary, in the interest of justice, to preserve the same till its final disposal to prevent multiplicity of proceedings and unnecessary legal complications. This Court is therefore, unable to accept the contention that the subsequent application was barred by res judicata.

12. Coming to the merits of the case, this Court finds that the trial Court as well as the lower appellate Court



have meticulously examined the contentions of both parties and the facts and circumstances of the case and the position of law has also been considered and discussed in detail. The trial Court has rightly held that the question of adoption of the plaintiff is to be decided in the suit and the defendants have not been able to show that the plaintiff has got any property from his original father, as his natural son. Prior to that, if any party is allowed to alienate the suit property or cause disturbance thereon or make any construction, it would create multiplicity of proceeding and the plaintiff would sustain irreparable loss. This Court fully concurs with such reasoning. The lower appellate Court has also concurred with such finding and held that in the circumstances it would be proper to direct both parties to preserve the property as it is, till their rights are decided in the suit.

13. From what has been narrated before, this Court finds nothing wrong in the orders passed by the Courts below so as to be persuaded to interfere therewith.



14. In the result, the CMP being devoid of merit is therefore, dismissed.

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Sashikanta Mishra,
Judge

Deepak

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