



**IN THE HIGH COURT OF ORISSA AT CUTTACK**

**CMP NO.397 OF 2024**

(An application under Article 227 of the  
Constitution of India)

\*\*\*\*\*

***Bijay Kumar*** ..... ***Petitioner***

*-versus-*

***Krushna Chandra Mahapatra and  
others*** ..... ***Opp. Parties***

*Advocate for the Parties :*

For Petitioner : Mr. Amit Prasad Bose, Advocate

For Opposite Parties : Mr. Banshidhar Baug, Advocate

**CORAM:  
JUSTICE K.R. MOHAPATRA**

-----  
Heard and disposed of on 21.08.2024  
-----

**J U D G M E N T**

1. This matter is taken up through hybrid mode.
2. Order dated 12<sup>th</sup> March, 2024 (Annexure-1) passed in CMA No.563 of 2012 is under challenge in this CMP, whereby learned Civil Judge, (Senior Division), Bhubaneswar allowed an application filed by the Opposite Party No.3 under Order I Rule 10(2) and Order XXII Rule 10 read with Section 146 CPC.
3. Mr. Bose, learned counsel for the Petitioner submits that CS No.1132 of 2009 was filed by the Plaintiff-Petitioner to declare him as the absolute owner of the suit property. A prayer was also



made to declare the sale deed executed by his father late Rama Chandra Mahapatra in favour of Krushna Chandra Mahapatra to be null and void, not binding on him and along with other consequential reliefs. In the said suit, Krushna Chandra Mahapatra was set *ex parte* and the suit was decreed. Subsequently, said Krushna Chandra Mahapatra filed CMA No.563 of 2012 under Order IX Rule 13 CPC to set aside the *ex parte* decree. During pendency of the CMA, Opposite Party No.3 filed an application under Order I Rule 10 (2) and Order XXII Rule 10 read with Section 146 CPC to be impleaded as a party to the proceeding under Order IX Rule 13 CPC. The said application was allowed vide order dated 12<sup>th</sup> March, 2024 (Annexure-1). Assailing the same, the present CMP has been filed.

**3.1.** It is his submission that after the suit was decreed *ex parte*, Krushna Chandra Mahapatra sold the entire suit property to Opposite Party No.3 by virtue of RSD dated 28<sup>th</sup> June, 2012. On the basis of such sale, the Opposite Party No.3 filed an application for intervention. When said Krushna Chandra Mahapatra, namely, his vender is prosecuting the CMA diligently, there was no necessity to implead the vendee/*lis pendens* purchaser as a party to the proceeding under Order IX Rule 13 CPC. He drew attention of this Court to the objection filed by Krushna Chandra Mahapatra, wherein at para-5, he has categorically stated that he is honestly and diligently prosecuting the case. It is also stated in the objection that said Krushna Chandra Mahapatra has already adduced oral as well as documentary evidence by examining himself as O.P.W.1 and the evidence from his side (Krushana Chandra Mahapatra) has already been closed. Thus, at this stage, impleadment of a *lis pendens*



purchaser is nothing but to protract the litigation. Although, it is alleged that after filing of the petition under Order IX Rule 13 CPC, Krushna Chandra Mahapatra colluded with the Plaintiff, namely, the Petitioner in this CMP, but, there is no material to that effect. On the other hand, materials available on record clearly disclose that Krushna Chandra Mahapatra is prosecuting the litigation diligently. He, therefore, submits that there is no necessity to implead said *lis pendens* purchaser as a party to the proceeding under Order IX Rule 13 CPC, which will create further complications.

4. Mr. Baug, learned counsel for the contesting Opposite Party No.3 vehemently objects to the same. It is his submission that late Rama Chandra Mahapatra during his lifetime, had purchased the suit land from one Anjan Kumar Ghosh vide RSD dated 13<sup>th</sup> September, 1995. Said Rama Chandra Mahapatra sold the suit property vide RSD No.13097 dated 26<sup>th</sup> December, 2005 to Krushna Chandra Mahapatra (Petitioner in CMA). In the plaint, in CS No.1132 of 2009, the Plaintiff-Petitioner provided wrong address of Krushna Chandra Mahapatra. As such, summons could not be served on him and he was unaware of the litigation, i.e., CS No.1132 of 2009. Said Krushna Chandra Mahapatra was also unaware of the *ex parte* decree dated 19<sup>th</sup> May, 2019. Being ignorant about the *ex parte* decree, Krushna Chandra Mahapatra sold the suit property to Opposite Party No.3 by virtue of RSD dated 28<sup>th</sup> June, 2012 and delivered possession. One Santilata Mahapatra, the sister of the Petitioner and Opposite Party No.1 had filed CS No.57 of 2012 in the Court of learned Civil Judge, (Senior Division), Udala for partition of the property at Udala. Relief was also sought to declare



the sale deed executed by Rama Chandra Mahapatra in favour of Krushna Chandra Mahapatra as well as the sale deed executed by Krushna Chandra Mahapatra in favour of Opposite Party No.3 to be null and void. In the said suit, the present Petitioner was arrayed as Defendant No.5, Krushna Chandra Mahapatra was arrayed as Defendant No.7 and Opposite Party No.3 was arrayed as Defendant No.10. Opposite Party No.3-Defendant No.10 was set *ex parte* in the said suit. However, learned trial Court held both the sale deeds, i.e., one by Rama Chandra Mahapatra to Krushna Chandra Mahapatra and the other by Krushna Chandra Mahapatra to Opposite Party No.3 to be valid and also held that valid title passed to the Opposite Party No.3 by virtue of the sale deed executed by Krushna Chandra Mahapatra. As Krushna Chandra Mahapatra colluded with the Petitioner (Plaintiff in the CS No.1132 of 2009) in the proceeding under Order IX Rule 13 CPC, the Opposite Party No.3 filed an application under Order I Rule 10(2), Order XXII Rule 10 read with Section 146 CPC to be impleaded as a party to the suit to protect his interest in the suit property.

**4.1.** It is his submission that a *lis pendens* purchaser is also entitled to maintain a petition under Order IX Rule 13 CPC to set aside *ex parte* decree passed against his vendor even when he is not a party to the suit. In support of his submission, he relied upon the case of ***Raj Kumar -v- Sardari Lal and others***, reported in **(2004) 2 SCC 601**, wherein discussing the scope of Section 146 CPC, Order XXII Rule 10 CPC and Order I Rule 10 CPC, Hon'ble Supreme Court held as under:



“15. We hold that a *lis pendens transferee*, though not brought on record under Order 22 Rule 10 CPC, is entitled to move an application under Order 9 Rule 13 CPC to set aside a decree passed against his transferor, the defendant in the suit.”

5. In the instant case, the transferor, namely, Krushna Chandra Mahapatra was set *ex parte* in CS No.1132 of 2009. Thus, in the proceeding to set aside the *ex parte* decree in the said suit, the Petitioner is a proper party and has a right to be impleaded, more particularly when, there is a collusion between the Petitioner, the Plaintiff and Krushna Chandra Mahapatra, his vender. To buttress his contention, Mr. Baug, learned counsel for the Opposite Party No.3 drew attention of this Court to the deposition of Bijay Kumar in the proceeding under Order IX Rule 13 CPC. Said Bijay Kumar was examined as O.P.W.1 in the CMA. Krushna Chandra Mahapatra, the Petitioner in the CMA declined to cross-examine said Bijay Kumar. Although, Krushna Chandra Mahapatra filed the objection to the petition for intervention of the Opposite Party No.3, but, he did not whisper a single word that he is protecting the interest of his vendee, namely, Opposite Party No.3. He only stated in his objection that he is prosecuting the proceeding under Order IX Rule 13 CPC diligently and honestly. Thus, it can be safely concluded that there is collusion between his vender and the Plaintiff. Thus, learned trial Court has committed no error in impleading the present Opposite Party No.3 as a party to the proceeding under Order IX Rule 13 CPC.

6. Mr. Baug, learned counsel for Opposite Party No.3 also relied upon the ratio in the case of *Upendranath Samantasinghar and another -v- Bikash Chandra Mohapatra and another*, reported



in **2015 (I) ILR CUT 835**, wherein at para-14 and 15, this Court relying upon the case of **Raj Kumar** (Supra), held as under:

*“14. Section 141 of the Code predicates that the procedure provided in CPC with regard to suit would be followed as far as can be made applicable in all proceedings in any court of civil jurisdiction. The explanation thereto clarifies that the expression "proceedings" would include one under Order 9 and Section 141 of the Code. A proceeding under Order 9 Rule 9 of the Code would thus come within the ambit of Section 52 of the T.P. Act and Order 22 Rule 10 CPC.*

*15. Section 146 conceives of furtherance of proceedings by or against representatives of any person claiming under his title and would have application unless excluded by any provision of the Code or by any law for the time being in force. This salutary provision thus recognizes a substantive right in favour of a representative of any person involved in any proceeding as contemplated to pursue the same on his/her behalf. A conjoint reading of Section 146 and Order 22 Rule 10 thus recognizes the right of a representative of a person claiming under him, amongst others by virtue of assignment, creation or devolution of any interest during the pendency of a suit or proceeding in any court of civil jurisdiction to continue with it on his behalf. Such a right is therefore fundamental and intrinsic for such a representative claiming under the person concerned.”*

**6.1.** It is further submitted that after being impleaded as party, the Opposite Party No.3 was allowed to cross examine the Plaintiff, namely, Bijay Kumar. But, he did not adduce evidence in the matter. CMA filed under Order IX Rule 13 CPC is at present posted for argument. He, therefore, submits that the impugned order under Annexure-1 warrants no interference.

**7.** Heard learned counsel for the parties.

**8.** Perused the materials as well as case laws cited by the respective parties in support of their case.



9. The question that requires consideration in this CMP as to whether a petition for intervention filed by a *lis pendens* purchaser in a proceeding under Order IX Rule 13 CPC to set aside the *ex parte* decree against his vendor is maintainable or not. Law is well settled in the case of **Raj Kumar** (supra) that a *lis pendens* purchaser can also maintain a proceeding under Order IX Rule 13 CPC to set aside the decree passed against his transferor. In the instant case, the suit was decreed *ex parte* against the transferor namely, Krushna Chandra Mahapatra. He was also impleaded as Defendant No.1 in the suit, i.e., CS No.1132 of 2009 filed by the present Petitioner. In the sale deed, executed by Krushna Chandra Mahapatra in favour of Opposite Party No.3, there was no whisper with regard to the pendency of the civil suit or *ex parte* decree passed therein. It may be so as the transferor of the Opposite Party No.3, namely, Krushna Chandra Mahapatra had alleged in the petition under Order IX Rule 13 CPC that he was not served with summons in the suit. Thus, it appears that the Opposite Party No.3 the *lis pendens* purchaser had no occasion to know about the filing of CS No. 1132 of 2009 or the *ex parte* decree passed therein. In the meantime, in CS No.57 of 2012 filed by the sister of his vendor, namely, Santilata Mahapatra, the sale deed executed in favour of Krushna Chandra Mahapatra by Rama Chandra Mahapatra and the sale deed executed by Krushna Chandra Mahapatra in favour of the Opposite Party No.3 has been held to be valid and it is also held that valid title passed to Opposite Party No.3 by virtue of the aforesaid sale deeds. It is also admitted by Krushna Chandra Mahapatra that Opposite Party No.3 has been



delivered with possession over the suit property pursuant to the sale in its favour and it is in possession over the suit property.

**10.** Mr. Bose, learned counsel for the Petitioner, however, submits that the matter arising out of CS No.57 of 2012 at present is pending before RSA No.103 of 2024. The judgment and decree passed in CS No.57 of 2012, in which it is held that Opposite Party No.3 has a valid title over the suit property has not been disturbed or varied till date. Thus, Opposite Party No.3 has a subsisting interest over the subject matter of dispute. Materials available on record suggest that the interest of the Opposite Party No.3, *lis pendens* purchaser is not being protected by his vendor, namely, Krushna Chandra Mahapatra, who is the Petitioner in the petition under Order IX Rule 13 CPC.

**11.** Krushna Chandra Mahapatra, the vendor of the Opposite Party No.3 does not challenge the impugned order under Annexure-1. It is the Plaintiff, who is Opposite Party No.1 in the proceeding under Order IX Rule 13 CPC has challenged the order impleading the Opposite Party No.3 as party to the said proceeding. It is not understood as to how the present Petitioner, who is Opposite Party No.1 in the CMA, is prejudiced by the impugned order.

**12.** This Court finds that Opposite Party No.3, having interest in the subject matter of dispute, is a proper party to the proceeding under Order IX Rule 13 CPC.

**13.** It is submitted by Mr. Baug, learned counsel for the Opposite Party No.3 that the said proceeding is at present posted for argument.





**14.** Taking into consideration the matter in its entirety, I find no infirmity in the impugned order under Annexure-1.

**15.** Accordingly, this CMP, being devoid of any merit, stands dismissed. In the circumstances, there shall be no order as to costs.

Urgent certified copy of this judgment be granted on proper application.

***(K.R. Mohapatra)***  
***Judge***

*High Court of Orissa, Cuttack*  
*The 21<sup>st</sup> Day of August, 2024 // Rojalin //*