

(1979) 04 OHC CK 0006
In the Orissa High Court
Case No : Civil Revision No. 65 of 1978

Adhikari Gopinath Das

APPELLANT

Vs

Nirmal Chandra Mohanty and Others

RESPONDENT

Date of Decision : 09-04-1979

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1
Orissa Consolidation of Holdings and Prevention of Fragmentation of Land Act, 1972 —
Section 4(4), 51

Citation : AIR 1979 Ori 159 : (1979) 48 CLT 93

Hon'ble Judges : S. Acharya, J

Bench : Single Bench

Advocate : K.C.J. Ray, for the Appellant; P.K. Misra, for the Respondent

Judgement

S. Acharya, J.—This revision arises out of the order dated 5-12-1977 of the Munsif, Puri in Original Suit No. 179 of 1976-1. By the impugned order the court below has decided that the suit has abated under the Orissa Consolidation of Holdings and Prevention of Fragmentation of Land Act, 1972 (Orissa Act 21 of 1972) (hereinafter referred to as the "Act"), as the area comprising the suit lands has come under the Consolidation Proceedings.

2. The reliefs prayed for in this suit are; (i) realisation of damages caused to the plaintiff due to the unlawful trespass and illegal acts of the defendants on the suit land; (ii) restraining the defendants by a permanent injunction not to commit any further act of damages or to interfere with the possession of the plaintiff over the suit lands; and (iii) for other consequential reliefs.

3. The learned counsel appearing for the petitioner contends that the prayer for permanent injunction or the interlocutory injunction which has already been granted in the suit, and the prayer for recovery of damages for the illegal acts of the defendants on the suit lands are not matters within the purview of the powers of the Consolidation Officers, and Sections 4 and 51 (2) of the Act have no application to suits asking for such reliefs. The learned counsel appearing for

the opposite parties, however states that in suits for permanent injunction and for recovery of damages from the defendants for their alleged illegal acts, the court will have to necessarily adjudicate upon the right, title and interest of the plaintiff in the suit land, which matters are exclusively within the jurisdiction of the Consolidation Officer and hence the civil court shall have no jurisdiction to entertain such suits, and such suits already instituted shall abate or stand terminated in their entirety under Sections 51 (2) and 4 (4) of the Act and interlocutory orders passed in such suits shall be of no effect or force.

4. The jurisdiction of Civil Court to try cases of civil nature is not excluded unless cognizance of the entire suit is barred either expressly or impliedly. Statutes ousting the jurisdiction of the civil courts must be very strictly construed, and every presumption should be made in favour of the jurisdiction of the civil courts, and exclusion of its jurisdiction is not be readily inferred unless the exclusion is either explicitly expressed or clearly implied Sub-section (4) of Section 4 provides that:--

"every suit and proceedings for declaration of any right or interest in any land situate within the consolidation area in regard to which proceeding could be or ought to be started under this Act, which is pending before any Civil Court, whether of the first instance or appeal, reference or revision shall, on an order being passed in that behalf by the Court before which such suit or proceeding is pending stand abated: Provided"

Section 51 of the Act provides:--

"Notwithstanding anything contained in any other law for the time being in force, but subject to the provisions contained in Sub-section (3) of Section 4 and Sub-section (1) of Section 7-

(1) All questions relating to right, title, interest and liability in land lying in the consolidation area, except those coming within the jurisdiction of Revenue Courts or authorities under any local law for the time being in force, shall be decided under the provisions of this Act by the appropriate authority during the consolidation operations and

(2) No Civil Court shall entertain any suit or proceeding in respect of any matter which an officer or authority empowered under this Act is competent to decide."

These are the only two relevant provisions in the Act and which apply to this case.

5. A suit with a prayer for permanent or interlocutory injunction restraining any person from causing any damage to or illegal acts on the property belonging to or in the possession of another and/or for realisation of damages on that account is not directly covered under the purview of Section 4 (4) or Section 51 (2) of the Act. Ouster of jurisdiction of the civil court to issue a permanent injunction or temporary injunction and/or to direct payment of damages for illegal acts is not explicitly expressed in the aforesaid provisions of the Act.

6. Mr. Misra, the learned counsel for the opposite parties, however, states that the prayer for perpetual injunction can only be granted by the decree made at the hearing and upon the merits of the suit, as provided under Sub-section (2) of Section 37 of the Specific Relief Act, and that being so a civil court cannot grant perpetual injunction in respect of a suit land within the area covered by the consolidation proceedings, as that would necessarily require adjudication and final decision on the questions of right, title and interest in that suit land, which questions cannot be adjudicated by the civil court during the consolidation proceedings. There is force in the above submissions. In suits for permanent injunction and for damages arising out of the illegal acts of the defendants in respect of such suit lands, the court has necessarily to adjudicate finally the right, title and interest of the plaintiff in the suit land. The civil court cannot decide finally issues on right, title and interest in respect of suit lands during the consolidation proceedings. So the civil court cannot proceed to decide whether to grant or not to grant perpetual injunction prayed for in the suit. But as the jurisdiction of the civil court to entertain suits with such prayers is not ousted either explicitly or by clear implication Section 51 (2) will not be a bar for the civil court to entertain such a suit, but it will not finally decide the questions on right, title and interest in the suit land so long the consolidation proceedings remain in force in respect of the area comprising the suit lands and hence it cannot grant or refuse to grant the prayer for perpetual injunction or damages as prayed for in the suit. Such a suit shall only stand abated u/s 4 (4) till the publication of the Notification u/s 41 or Sub-section (1) of Section 5 of the Act. Abatement of the suit u/s 4 (4) of the Act does not mean that the suit comes to an end or that it terminates upon the publication of the notification issued, under Sub-section (1) of Section 3 of the Act. From the language of Section 4 it is clear that suits coming within the purview of subsection (4) cannot proceed for final decision so long the consolidation proceedings are in progress. The word "till" in the first paragraph of Section 4 and the observations in paragraph 11 of the decision reported in *The Agricultural and Industrial Syndicate Ltd. Vs. State of U.P. and Others*, fortify my above view. Therefore, such a suit remains in abeyance for the time being, and so long the consolidation operations are in force no final decision either to grant or not to grant permanent injunction or damages as stated above can be given by the Civil Court in such a suit.

7. It is contended by Mr. Ray, the learned counsel for the petitioner, that though the petitioner's prayer for permanent injunction and realisation of damages cannot be granted for the time being on the above considerations, there is nothing to prevent the Civil Court to grant the prayer for temporary injunction in order to save the plaintiff from illegal trespass upon his land or from real or threatened illegal acts or destruction or damage to his property. In this connection Mr. Ray contends that for granting temporary injunction, the court is not required to hear the suit on merit or to decide finally the issues of right, title or interest of the plaintiff in the suit land. There is weight and substance in the above submission of Mr. Ray. Temporary injunctions are such as to continue until

a specified time or until the further order of the court, and they may be granted at any stage of the suit and are regulated by the Code of Civil Procedure, as provided under Sub-section (1) of Section 37 of the Specific Relief Act. In order to assess the prayer for temporary injunction, the Court may have to consider whether the plaintiff has any right, title or interest in the suit land. Considerations of these questions for the purpose of granting or refusing a prayer for temporary injunction and findings on such questions would be merely prima facie incidental, and ancillary, only for the purpose of assessing the prayer for temporary injunction and not for anything else, and the said findings shall not be of any avail or effect for any other purpose.

There is another angle from which the matter should also be viewed. The jurisdiction of the Civil Court is neither expressly nor impliedly ousted under the Act to entertain a prayer for temporary injunction. It would be unrealistic, far-fetched and against the canons of judicial practice and propriety to apply the theory of implied ouster of civil court's jurisdiction to entertain a prayer for temporary injunction on the plea that consideration of the said prayer would involve prima facie determination of right, title or interest in the suit property. Ouster of civil court's jurisdiction in respect of such a matter would encourage and perpetuate illegal acts, and persons actually suffering from or threatened with such a wrong cannot get any protection of law, which is their right to get from the courts of law, and hooligans and perpetrators of crime will have the upper hand over the law-abiding citizens, as apart from the civil court no other institution or authority can issue temporary injunction to prevent such acts or threats under the existing law. The legislator while engrafting Sections 4 and 51 of the Act could never have intended that citizens, suffering from or being threatened with such wrongs should be left without any remedy during the progress of the consolidation proceedings. The prima facie findings of the civil court on the question of right, title and interest in such a matter will hold good only for that matter, and will not in any way fetter the Consolidation Officer to arrive at his own finding on the said issues during the consolidation proceedings. There is absolutely no possibility of a conflict of jurisdiction. If the Consolidation Authorities legally arrive at a different finding on the said issues, the civil court, on being moved by the appropriate party, may rescind, annul or modify its order of temporary injunction in accordance with the lawful decision of the Consolidation Authorities. But so long that is not done, the order of temporary injunction passed by the civil court shall hold good for all intents and purposes, as that is an order passed by a court of competent jurisdiction.

8. In this case, on the petition of the plaintiff under Order 39, Rule 1, Civil P. C. dated 4-8-1976, Misc. Case No. 386/76 was started, and by the ex parte order dated 5-8-1976 the opposite parties were restrained from putting any rubbles, stones or earth on any portion of the suit property, or from constructing any road thereon, or from committing any act of waste or damage till the final disposal of the Misc. Case. That order continued till 15-12-1977 " when the said Misc. Case was to be taken up for final hearing in the presence of both the parties. On that

date it was ordered that as the suit had abated on 5-12-1977, as per order impugned in this Civil Revision, this Misc. Case became infructuous, and it was dismissed on that consideration.

9. The basis of the dismissal of the Misc. Case is illegal and incorrect, as on the abatement of the suit the Misc. Case started on the petition under Order 39, Rule 1, Civil P. C. did not become infructuous. For reasons stated above, the suit in which the petition for temporary injunction has been filed has not terminated or put an end to; at present it has merely remained in abeyance and in this suit the court has jurisdiction to grant or refuse a prayer for temporary injunction. That being so the order dismissing the Misc. Case is illegal and incorrect. So in the interest of justice I, in exercise of my inherent jurisdiction, deem it just and proper to set aside the said order and restore the miscellaneous case to the file of the court below. Accordingly the ex parte order of injunction dated 5-8-1976 is restored, and the court below is hereby directed to proceed to dispose of the Miscellaneous Case in accordance with law on giving notice to both the parties.

10. The Civil Revision is disposed of accordingly. Each party shall bear his own cost of this revision.