

(2004) 01 OHC CK 0028

In the Orissa High Court

Case No : Original Jurisdiction Case No. 14955 of 1999

Akshaya Kumar Panigrahi

APPELLANT

Vs

The State of Orissa and Others

RESPONDENT

Date of Decision : 09-01-2004

Acts Referred:

Constitution of India, 1950 — Article 227

Citation : (2004) 97 CLT 749

Hon'ble Judges : P.K. Tripathy, J

Bench : Single Bench

Advocate : A.K. Mahakud, for the Appellant; Addl. Standing Counsel for Opp. Parties 2 to 5, R.K. Mohanty, D.K. Mohanty, N. Behuria, P.K. Ratha and A.P. Bose for Opp. Parties 6 to 8, for the Respondent

Final Decision : Dismissed

Judgement

P. K.Tripathy, J.—To understand the case of the parties the admitted inter se relationship is required to be stated. The following genealogy gives that particular which is ascertainable from the facts stated in the impugned judgments :

GENEALOGY Madan | ----- | | Indumati Loka Janai
(1st wife) (2nd wife) | | Jogamaya | ----- |
| | Chandrasekhar Sadhu Prafulla Sobhagini | Akshyaya

2. Petitioner is the daughter's son of the common ancestor Madan. The opposite party members are the sons through the 2nd wife. Petitioner claims an equal share with the opposite party members on the properties of Madan on the ground that Madan died in 1967 and his married daughter Sobhagini predeceased him in 1966 and therefore petitioner is a Class - I heir in accordance with the provision in the Hindu Succession Act to succeed to the properties of Madan together with the other Class - I heirs and therefore, the Land Record during the consolidation be prepared accordingly.

3. That assertion of the petitioner is being contested by the opposite party members on the grounds that in a partition effected in the year 1964 Madan Mohan Padhi, excluding the property bequeathed in a Will in favour of his 1st wife Indumati, divided the remaining landed properties allotting one share to each of Chandra Sekhar and Sadhu and one share together to Loka Janani (the 2nd wife) and Prafulla the youngest son and Madan did not retain anything to his share nor he allotted a share to the married daughters, viz : Jogamaya and/or Sobhagini. However, after death of Indumati in 1980, Jogamaya succeeded to the property of indumati. They further stated that such factum of partition and division of property was considered by the Civil Court in Title Suit No, 44 of 1975 and the Revenue Court in O.L.R.Case No. 266 of 1975(Ceiling Proceeding). The Civil Court granted a decree for partition confirming the previous partition and if the above noted O.L.R. case i.e., the Ceiling Proceeding under Chapter IV of Orissa Land Reforms Act, 1960, the Tahasildar on field enquiry found separate possession of each of the Co-sharers in accordance with the partition effected by Madan and accordingly did not find any ceiling surplus land and dropped the ceiling proceeding. On the basis of the aforesaid contention, opposite party members advanced their case that Sobhagini or her heirs have no legal right to claim for a share from the case land.

4. It also appears from Annexure - 4, i.e., the judgment delivered by the Consolidation Officer on 21.2.1984 that properties fallen to the share of Chandra Sekhar, Sadhu and Prafulla were further divided, on consent amongst their respective sons on the basis of amicable partition and accordingly allotted plots in such partitions were directed to be recorded separately in their names.

5. Petitioner's claim for a share was registered as Objection Case No. 806 of 1981. Learned Consolidation Officer, Bheden-rejected the claim of the petitioner. Against that petitioner preferred consolidation appeal case No. 199 of 1982, in the Court of Deputy Director, Consolidation, Bargarh. Learned Deputy Director set aside the impugned judgment and directed the Consolidation Officer to afresh consider the matter. After remand petitioner did not adduce any further evidence but pursued his claim and advanced contention on the basis of available evidence on record.

6. Learned Consolidation Officer on appreciation of above noted fact and evidence on record recorded the finding in favour of a valid previous partition effected by Madan and on that basis title and possession having passed on to his sons through the 2nd wife. Similarly, he held that the property belonging to Indumati is liable to be excluded as it was done by the Civil Court as well as in the Ceiling Proceeding but one plot of land i.e., Plot No. 777 having remained joint notwithstanding the aforesaid partition, petitioner is entitled to a share out of the share which would have fallen to the share of Madan in the event of a partition. Accordingly, 1/36th interest in that property was directed to be recorded in the name of petitioner.

7. As against the aforesaid judgment of the Consolidation Officer, petitioner

preferred Consolidation Appeal No. 100 of 1984. As per the judgment, Annexure - 5, delivered on 17.8.1984 learned Deputy Director of Consolidation, Bargarh, allowed the appeal in part. He recorded the findings that the property given to Indumati is not available to the petitioner and that be excluded. Out of the remaining property recorded separately in the names of the three sons respectively as Land Register Holding Nos. 69, 226 and 138 the self acquired property out of the same be excluded but on the remaining land i.e., the landed property recorded in the name of Madan, petitioners right, title and interest be recorded to the extent of 1/36th share in each of such Properties in the said three L.R. Holdings. In other words, learned Deputy Director held that property recorded in the name of Madan, is to be notionally partitioned and 1/36th share out of that should go to the petitioner. Accordingly, the, appeal was allowed in part.

8. Petitioner preferred Consolidation Revision No. 709 of 1988 and learned Joint Commissioner, Consolidation of Holdings and Settlement, Sambalpur delivered the impugned judgment (Annexure-8) by dismissing the revision. He upheld the judgment of the appellate Court.

9. Petitioner reiterates his contention raised in the Courts below in support of his claim for 1/6th share. The opposite parties 6 to 8 resist to that claim on the basis of the case projected by them before the Consolidation Officer.

10. Undoubtedly this case is before this Court to exercise the writ jurisdiction under Article 227 of the Constitution of India. Though such jurisdiction is wide enough to grant substantial justice but the writ Court has its own limitation to interfere with the factual finding or the legal conclusion derived in as much as in the absence of illegality or perversity in the findings recorded the Writ Court is not to interfere with the findings of the Courts below and to substitute its own findings on reappraisal of evidence.

11. It is pertinent to note here that one of the contentions of the petitioner is to get a share from the property bequeathed in favour of Indumati and succeeded by her daughter Jogamaya. The said Jogamaya is not a party to the proceeding. Therefore, the claim of the petitioner cannot be considered with respect to the property which has been recorded in the name of Jogamaya.

12. The other claim of the petitioner is in advancing a claim of 1/6th share from the land recorded in the name of Madan as well as the land excluded by the Courts below on the ground that those are self acquired properties of the three sons of Madan. In that respect petitioner's, contention is that Madan did not affect any portion and therefore such properties are still joint family property and the property described as self acquired property were actually purchased by Madan and remained as joint family property. No amount of evidence is available on record relating to acquisition of such properties out of joint family funds or such property being thrown to the common hotchpotch during subsistence of joint family for enjoyment by all the coparceners. Therefore, that contention of

the petitioner was rightly rejected by the Courts below. So far as the other properties (the land recorded in the name of Madan), this Court does not find any illegality or perversity in the findings recorded by the appellate Court, It is not necessary to recapitulate the facts and circumstances and the evidence in that respect on the basis of which reasonable findings has been recorded by the Courts below. It may be noted that what has been settled in the family of Madan amongst his family members with the approval of Civil and Revenue Courts, petitioner wants to de-settle the same in furtherance of his greed for the property. After death of his mother in 1966, or death of his grand-father in 1967, petitioner never asserted his right, title and interest or possession over the property at any stage and atleast no evidence is available to that effect. The Civil Court granted a decree for partition and the ceiling proceeding was closed recognizing separate title and possession of each Branch. The whole thing cannot be re-opened after a period of over two decades simply because the petitioner thinks that he has a larger share than 1/36th interest. Claim of the petitioner having been correctly considered and determined by the Courts below, therefore, this Court sees no reason to interfere with the same.

Accordingly, the writ petition is dismissed.