
(2008) 12 OHC CK 0027
In the Orissa High Court

Balaram Swain and Another

APPELLANT

Vs

Rabindra Swain and Others

RESPONDENT

Date of Decision : 05-12-2008

Acts Referred:

Orissa Consolidation of Holdings and Prevention of Fragmentation of Land Act, 1972 —
Section 9(3)

Citation : (2010) 109 CLT 58 : (2009) 1 OLR 534 Supp

Hon'ble Judges : A.S. Naidu, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

A.S. Naidu, J.—The Order Dated 2-8 1999 passed by the Commissioner of Consolidation, Cuttack in Misc Case No. 330 of 1998, vide Annexure 4, is assailed in this Writ application.

2. The dispute relates to Ac. 0.19 decimals of land appertaining to Hal plot No. 469, Hal Khata No. 410 of Mouza Nunigaon, Govindpur in the district of Cuttack. One Bhagu Barik was the original owner of the disputed land. By a registered sale deed dated 16-11-1976 said Bhagu Barik had sold that land jointly to Jagabandhu Swain, Balaram Swain & Trilochan Swain. The Petitioners, in this Writ application, are the legal heirs & successors of Jagabandhu Swain. Admittedly the aforesaid three persons were possessing the disputed land according to their convenience. According to the Petitioners, there was no partition of the disputed land by metes & bounds, but then Jagabandhu being the only earning member among the three brothers, had constructed of a double-storeyed building. & was staying therein with his family separately. After the Mouza in which the disputed land situated was brought under consolidation operation as per the Orissa Consolidation of Holdings & Prevention of Fragmentation of Land Act, 1972 (hereinafter referred to as the Act), an Objection Case was filed by Jagabandhu inter alia claiming partition of the disputed land allotting the portion over which the double-storeyed building stood

in his favour. The said Objection Case was numbered as 505 of 1989. Similarly his other two co-owners had filed Objection Case Nos. 504 of 1989 & 204 of 1989 u/s 9(3) of the Act claiming to record their respective portions in the disputed land separately by way of partition. All the three Objection Cases were heard together & by Order Dated 8-7-1993 the Consolidation Officer, Niali disposed of the Objection Cases directing to record the disputed land jointly in favour of all the three co-owners.

3. Being aggrieved by the aforesaid order of the Consolidation Officer, Jagabandhu filed an appeal before the Deputy Director, Consolidation which was numbered as 35 of 1994. The Deputy Director dismissed the appeal by Order Dated 30-11-1994. Assailing the said order of the Deputy Director, Jagabandhu preferred a Revision Case before the Consolidation Commissioner Which was numbered as 101 of 1995. The prayer of Jagabandhu in that Revision Case was to issue direction to the authority concerned to make a note of respective possession of the co-owners in the record-of-rights. The Revisional authority, relying on a deed of amicable settlement dated 21-7-1981 said to have been entered into among the co-owners dated 21 -7-1981, allowed the Revision Case by Order Dated 5-5-1997 directing the concerned authority to record the disputed land as per the allotments made in the said amicable settlement.

4. The Petitioners, who were the co-owners of Jagabandhu filed Misc.Case No. 330 of 1998 before the Commissioner praying to review/recall the aforesaid Order Dated. 5-5-1997 passed in the Revision Case & to re-hear the Revision Case mainly on the ground that no opportunity of hearing had been afforded to them by the Revisional authority. The Commissioner observed that the Petitioners had been represented through their Counsel who was present in Court. Even otherwise, he held, Revision Case No. 101 of 1995 had been disposed of on merit by order passed on 5.5.1997. A petition filed by the Petitioners to recall the said Order Dated 5.5.1997, being Misc.Case No. 111 of 1997 had been dismissed for default on 6-8-1997. Then, to restore the said Misc.Case, the Petitioners had filed a petition. The Commissioner observed that the Petitioners were negligent from the very beginning & no sufficient cause had been shown by them with regard to their default. Being aggrieved by the said order refusing to restore Misc.Case No. 111 of 1997 the Petitioners have filed this Writ application.

5. After receiving notice, a counter-affidavit has been filed by the Opposite Parties taking the stand that enough opportunity had been granted to the Petitioners but they had failed to avail of the same. They have further averred that review being a creature of Statute & there being no provision under the Act for review of an order, the petition filed for review/recall of the order in question had been rightly rejected by the Commissioner.

6. This Court heard Learned Counsel for the parties at length & perused the materials available on record. Fact remains, the Revision Case filed u/s 36 of the aforesaid Act had been disposed of on 5-5-1997. If the Petitioners were

aggrieved by the said order, it was open to them to assail the same before this Court but instead of doing so, they had preferred a petition for review/recall of the order of the Commissioner. There is no provision under the Act for review/recall of an order passed in a revision. That apart, the petition filed for review/recall was dismissed for default. Thereafter another petition was filed praying for restoration of that petition. Such conduct of the Petitioners gives an impression that the Petitioners were not very much serious about the lis. In this Writ application also the order passed by the Commissioner in the Revision Case is not assailed. Thus no effectual order can be passed by this Court. The Commissioner having no power to review/recall his order has rightly dismissed the petition for restoration of the Misc.Case. Further, this Court finds that the order of the Commissioner was passed way back in the year 1997. Eleven years have passed in the meanwhile. Much water might have flown in the meantime. This Court therefore does not find it just & proper to interfere with the order challenged before it & unsettle the settled position. The said order does not suffer from any infirmity or illegality. This Court accordingly dismisses the Writ application.