

(2014) 08 OHC CK 0032

In the Orissa High Court

Case No : Writ Petition (Civil) Nos. 20295, 20296, 20297 and 21971 of 2012

Bhakta Prasad Sahu

APPELLANT

Vs

Additional Commissioner of Settlement and Consolidation

RESPONDENT

Date of Decision : 19-08-2014

Acts Referred:

Specific Relief Act, 1963 — Section 34, 37(1)

Citation : (2014) 118 CLT 735 : (2014) 2 OLR 1008

Hon'ble Judges : B.K. Nayak, J

Bench : Single Bench

Judgement

B.K. Nayak, J.—All these four Writ Petitions have been filed challenging the common Order Dated 24.09.2012 passed by the Learned Additional Commissioner, Settlement & Consolidation, Sambalpur in Revision Case Nos. 55 of 1996, 1394 of 2005 & 1241 of 2005. W.P. (C) Nos. 20295, 20296 & 20297 of 2012 have been filed by the Petitioner Bhakta Prasad Sahu @ Bhismadev Sahu whereas W.P. (C) No. 21971 of 2012 has been filed by Pramod Kumar Banka, a purchaser from Bhakta Prasad Sahu in respect of a part of the disputed property. Since the Writ Petitions have been filed against the very same common order passed in three revision cases, all of them are heard analogously & being disposed of by this common order.

2. The facts of the case are that the case land measuring Ac. 12.05 appertains to Consolidation Holding No. 7 of village Pardhiapali & it stood recorded in the name of Anantaram Sahu in the Consolidation ROR finally published in the year 1984. After the death of Anantaram, the recorded owner, the Petitioner Bhaktaram Sahu & Anantaram's widow, Jagnyaseni together filed Revision Case No. 55 of 1996 under Section 37 of the OCH&PFL Act, in short "the Act", for recording their names in respect of the case land & correct the R.O.R. accordingly. The claim of the Petitioners in the said revision case is that Bhakta Prasad is the adopted son of Anantaram & in respect of such adoption Anantaram has executed a registered deed of adoption bearing Deed No. 58 of 1958. Opp. Party No. 3-Dasarath Sahu

filed a revision case bearing RC No. 1241 of 2005 for recording of the case land in his name & to correct the R.O.R. accordingly on the ground that Anantaram & his wife Jagnyaseni had died issueless & that they never adopted the Petitioner-Bhakta & that he being the grandnephew of late Anantaram & the nearest relation or heir of Anantaram, he succeeds to the property by way of natural succession. It further transpires that Opp. Party No. 3 subsequently amended his revision petition in R.C. No. 1241 of 2005 claiming the property also on the basis of a willnama said to have been executed by Anantaram in his favour on 13.05.1987 bequeathing the case land in his favour. During pendency of Petitioner's Revision Case No. 55 of 1996, Anantaram's widow-Jagnyaseni having died, the Petitioner filed a separate revision case bearing RC No. 1394 of 2005 to record the case land exclusively in his name after the death of Jagnyaseni. While all the three revisions were pending, by Order Dated 21.08.2006 the Additional Commissioner disposed of only Revision Case No. 55 of 1996 directing deletion of name of Anantaram from the ROR & to record the name of the Petitioner. Opp. Party No. 3 Dasarath Sahu filed W.P. (C) No. 13885 of 2006 challenging the said order of the Additional Commissioner on the ground that he was not given opportunity of hearing & that his own revision case No. 1241 of 2006 was also pending in respect of the very same land. By Order Dated 14.05.2010 this Court disposed of the said Writ Petition & remanded the matter back with a direction to take up & dispose of all the three revisions together. That is how all the three revisions were heard together & disposed of by the common impugned order.

3. It is an admitted position that challenging the validity of the deed of adoption executed by Anantaram in favour of the Petitioner C.S. No. 98 of 2008 has been filed by the present Opp. Party No. 3 in the Court of the Civil Judge (Senior Division), Sambalpur, which is subjudice. Taking into consideration the fact that the aforesaid suit is pending involving the question of adoption of the Petitioner by Anantaram, Additional Commissioner in the impugned order held that Opp. Party No. 3-Dasarath Sahu has succeeded to the property & entitled to be recorded for the same. He, therefore, allowed the revision case of Opp. Party No. 3 & dismissed Revision Case No. 55 of 1996 & Revision Case No. 1394 of 2005 filed by the Petitioner.

4. Learned Counsel for the Petitioners submits that Civil Suit No. 98 of 2008 has been filed by Opp. Party No. 3 only for declaring the registered deed of adoption executed by Anantaram Sahu in favour of the Petitioner as fraudulent & void & was not binding on him, & that it being the settled position of law that while deciding the question of title, the consolidation authorities can go into the question of adoption of a person incidentally, the rejection of the Petitioner's claim of title to the land by the Commissioner holding that the civil suit is pending, is not justified.

5. The Learned Senior Counsel Mr. R.K. Mohanty appearing for Opp. Party No. 3, placing reliance on the decision of this Court reported in Benudhar Dalai Vs. The State of Orissa, , submits that even though the Consolidation authorities in order

to decide the question of right, title & interest can incidentally decide the question of adoption, such decision would be a decision on collateral facts which may be challenged in a superior forum or in the civil Court & therefore, no exception can be taken to the impugned order of the commissioner, who taking note of the pendency of the civil suit rejected the claim of the Petitioner..

6. There is no dispute over the proposition that though the consolidation authorities are not conferred with power & jurisdiction to decide the question of status simpliciter & for that matter the question of adoption, yet while deciding the question of right, title & interest in land in the consolidation area they can ancillary & incidentally decide the question of adoption, if the decision on the question of right, title & interest on the land is based on the question of adoption. A Division Bench of this Court in the case of *Jairam Samantray Vs. Baikuntha Samantaray and Others*, held as follows:

"Having regard to the objects & the purpose of the enactment & the unambiguous words of wide amplitude, it is not open to constrict the field of operation by any pre-conceived notions. Questions relating to right, title, interest & liability in any land are to be decided by the consolidation authorities except those which can be decided only by the Civil Court & are, therefore, out of bounds to them. In deciding questions of right, title & interest & liability in land, questions & issues relatable thereto arise for decision. The decisions on the question of right, title, interest & liability depend & hinge on the decision on the connected questions, the questions which have to be decided ancillary & incidentally. Sometimes, in order to secure the relief the suitor has to clear hurdles & impediments standing on the way. Those hurdles may be Judgment or order of the Court or a document. So long as the hurdle stands on the way, grant of relief is not possible & permissible. It has to be removed. The Civil Court alone has jurisdiction to set aside Judgment or order or a document of transfer. A distinction has been drawn between documents of transfer which are void & those which are voidable. Void documents or transactions being ab initio void, they are non-est &, therefore, can be ignored. They being non-existent are not really hurdles on the way. But documents, transactions, Judgments or orders, which are not void ab initio, are to be avoided. Until avoided, they bind the parties & are impediments. The jurisdiction to set aside such documents, transactions, Judgments or decrees which are voidable & need avoidance, vests in the Civil Court but not in the consolidation authorities. The questions which do not necessitate interpretation of the Civil Court for the removal of the obstacle & can be ancillary & incidentally decided & on the resolution of which would depend the decision as to right, title, interest & liability in land, are within the jurisdiction of the consolidation authorities. Seeking a declaration simpliciter as to legal character as contemplated by Section 34 of the Specific Relief Act is exclusively within the jurisdiction of the Civil Court & not within the competence of the consolidation authorities. Except in case where title is claimed on the basis of transactions inter vivos in most cases title is claimed on the basis of relationship, say as son, father, mother, husband or wife etc. Each such question

of relationship is a question pertaining to legal character or status. Do not the consolidation authorities decide such question of legal character in cases after cases day in & day out? If then the consolidation authorities have jurisdiction to decide the question as to whether a person is son by birth, by what logic or law are they denied jurisdiction to decide if a person is son by way of adoption? Sonship is acquired either by birth or by way of adoption. They are the different modes of acquisition. If title to property as son by birth can be adjudicated upon by the consolidation authorities, we fail to understand why adjudication of claim to title as son by way of adoption should be out of bounds to them. We are, therefore, of the view that the statement of law that the consolidation authorities have no jurisdiction to decide the question of adoption, that being a question of status, is not correct. In almost every case, consolidation authorities are deciding the question of status but a declaration of the law to the effect that the consolidation authorities have no jurisdiction to decide the question of adoption, if such question arises ancillary or incidentally for adjudication of right, title & interest in property, is insupportable."

7. Now it is to be seen as to what civil suit the Opp. Party No. 3 has filed & what relief is sought for therein. In the plaint in C.S. No. 98 of 2008, the present Opp. Party No. 3 has made averments that the Petitioner was not the adopted son of Anantaram Sahu, but his natural father by practicing fraud & misrepresentation got the registered deed of adoption in favour of the Petitioner executed & has prayed for a declaration of the registered deed of adoption dated 22.04.1958 as fraudulent, void & inoperative in law & is not binding on the Plaintiff. There is no prayer for a declaration that the Petitioner is not the adopted son of Anantaram. It is stated that the Petitioner has filed his written statement in the suit denying the allegations of fraud, misrepresentation etc. in the matter of getting the deed of adoption executed & registered & at the same time stated that he was adopted by Anantaram. In view of the pleadings of the parties in the suit, Learned senior Counsel for Opp. Party No. 3 submits that the question of adoption of the Petitioner by Anantaram is an issue in the suit & the civil Court will record a finding on such issue & mould the relief sought for in the suit.

8. The factum of adoption of a person by another does not depend on the execution of a deed of adoption or the deed of acknowledgement of adoption. Under the Hindu Adoption & Maintenance Act, 1956, the requirement of a valid adoption is that the adopted child must have been given by the parents or the guardian & must have been accepted by the person taking on adoption. A deed of adoption or acknowledgement of adoption only serves as a piece of evidence to which a presumption may be attached if the document is registered, but by mere proof of the document, the factum of valid adoption cannot be proved without there being any evidence about giving & taking of the child in adoption. Opp. Party No. 3 being the Plaintiff in the suit he has couched his relief only to declare the registered deed of adoption of 1958 as fraudulent, void & inoperative & not binding on him. In order to seek such relief, he is only to prove that in fact fraud or misrepresentation was practised on Anantaram by the natural father of

the Petitioner & in the guise of getting some other document executed, Anantaram was made to execute the deed of adoption of which he had no knowledge. For granting the relief sought for by the Plaintiff in the suit, it is not necessary for the civil Court to go into the question whether the Petitioner was in fact validly adopted by Anantaram or not. It appears that being conscious of the fact that the question of title to the property on the basis of adoption was subjudice before the Consolidation Commissioner, who is competent to decide the question of adoption incidentally, the Opp. Party No. 3 couched the relief in the suit in the manner as aforesaid. Even if the Civil Court gives a finding on adoption, whether such finding will prevail over the finding of the Consolidation authority is not to be examined in this Writ Petition.

9. The decision of this Court in the case of Benudhar Dalai (supra) to the effect that a Court of limited jurisdiction even when decides a point collateral to the merits of the case upon which the limit to his jurisdiction depends would be open to enquiry in superior Court or the civil Court as to whether such collateral point was decided correctly by the Court of limited jurisdiction, has no application to the facts of the present case inasmuch as the consolidation authorities in order to exercise the jurisdiction vested in them for deciding the question of right, title & interest in land do not decide the question of status of a person as a collateral point, but they decide it as an ancillary & incidental issue when the decision regarding right, title & interest in land is based on such issue. In view of the settled position that consolidation authorities have the jurisdiction to decide the question of adoption incidentally where such question is the foundation for the decision on the question of right, title & interest in land, the impugned order of the Commissioner rejecting the revisions filed by the Petitioner only on the ground of pendency of the civil suit filed by the Opp. Party No. 3 is not legally sustainable. The impugned order is, therefore, set aside & all the three revisions are remitted back to the Commissioner of Consolidation for analogous hearing & disposal in accordance with law. If the Commissioner is of the view that the parties did not lead evidence on the question of adoption, or if it feels that it will not be appropriate to take evidence while exercising the power of revision under Section 37(1) of the Act, it may remit the matter to the Consolidation Officer concerned for disposal.

The writ applications are accordingly allowed. There would be no order as to cost.