

(1985) 02 OHC CK 0009
In the Orissa High Court
Case No : Civil Revision No. 19 of 1983

Binay Krushna Sadangi and Others APPELLANT
Vs
Smt. Katyaini Sadangi and Others RESPONDENT

Date of Decision : 04-02-1985

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 33 Rule 1
Orissa Consolidation of Holdings and Prevention of Fragmentation of Land Act, 1972 —
Section 3, 4(4), 5(1)

Citation : (1985) 59 CLT 264

Hon'ble Judges : D.P. Mohapatra, J

Bench : Single Bench

Advocate : B. Pal, for the Appellant; S. Misra and S.K. Nayak 1, for the Respondent

Final Decision : Dismissed

Judgement

D.P. Mohapatra, J.—The short question involved in this revision petition is whether the suit abates u/s 4(4) of the Orissa Consolidation of Holdings and Prevention of Fragmentation of Land Act, 1972 (for short referred to as "the Act".) 2. The opposite party No. 1 filed. It suit with an application for permission to sue as an indigent person (Misc. Case No. 219 of 1981) in the court of the Subordinate Judge, Balasore. The reliefs sought in the plaint were to declare documents No. 4112 to 4118 dated 9-11-1979 executed by her in favour of Defendants 1 to 9 as illegal, inoperative, blacked by no consideration and void for confirmation or Plaintiff's possession or in the alternative for recovery of possession. The Petitioners in this revision petition are Defendants 1, 2 and a in the suit. On being noticed by the Court, the Petitioners filed their objection to the application under Order 33, Rule 1, CPC filed by the Plaintiff-opposite, party. They filed another application on 17.12.1982 stating, inter alia, that, all the properties involved in the case lie within the area notified u/s 3 of the Consolidation Act, the consolidation proceeding is continuing in the said area and hence the suit in the civil court is not maintainable. The said application was

considered by the trial court and by his order dated 4-12-1982 the court rejected the application holding that the suit does not abate and he has jurisdiction to try and decide the same. This revision petition has been filed challenging the said order.

Section 4(4) of the Act read as follows:

Every suit and proceedings for declaration of any right or interest in any land situate within the consolidation area in regard to which proceedings could be or ought to be stated 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 that no such order shall be passed without giving the parties concerned an opportunity being heard:

(Provided further that on the issue of a notification under Sub-section (1) of Section 5 in respect of the said area or part thereof-

(a) every order passed by the Court under Clause (4) in relation to the lands situate in such area or part thereof as the case may be shall stand vacated; and

(b) all such suits and proceedings as are referred to in Clause (2) or Clause (4) which relate to lands situate in such area or part thereof, as the case may be shall be proceeded with and disposed of in accordance with the law as if they had never abated):

Provided also that such abatement shall be without prejudice to the right of the person affected to agitate the right of interest which formed the subject matter of the said suit or proceedings, before the proper consolidation authority in accordance with the provisions of this Act of the rules made thereunder.

This provision has been the subject matter of interpretation in several decisions of this Court. It has now to be accepted as a settled proposition of law that taking; into consideration the nature of the case pleaded by the Plaintiff in the plaint and the reliefs sought therein if it can be said, that it comes within the purview of enquiry by the authorities under the Act, then the suit has to be held to abate under the provision quoted above. On the other hand, if on reading the averments" of the plaint and the reliefs sought therein, it is clear that the subject matter of enquiry in the suit is not within the purview of the authority under the Act, then the suit cannot be held to abate and must proceed. This is based on well recognised principle that the common law forum i.e. the Civil Court should not be ordinarily held to be deprived of its jurisdiction to entertain disputes of civil nature unless it is manifest that permitting the suit to proceed in such forum would give rise to two parallel enquiries being conducted before two forums simultaneously, a situation which is intended to be avoided under the provisions u/s 4(4) of the Act.

3. Hence, the question to be determined in this case is whether on construing the plaint can it be said that the consolidation authorities have jurisdiction to

undertake the enquiry and grant relief sought for in the plaint. The main relief sought for in the plaint, as already noticed, is to declare the deeds of gift and the sale-deeds executed by the opposite party No. 1 in favour of the Petitioners and other Defendants null and void. The gist of the case made out in the plaint is that the Plaintiff, an old, ailing and illiterate lady was given the impression that she was executing some documents authorising Defendant No. 1 to manage her properties, but subsequently she came to know that the said Defendant No. 1 had got several sale-deeds and gift-deeds executed by her in that process.

4. The trial court has accepted the submission that a suit for setting aside a deed relating to land vitiated by fraud is not a mere suit for declaration of right and it would not abate. He has accordingly rejected the application filed by the Petitioners. This view is supported by a decision of the Supreme Court in the case of *Gorakh Nath Dube Vs. Hari Narain Singh and Others*, wherein it has been held that the consolidation authorities will have jurisdiction if the document sought to be set aside is ab initio void but have no power to set aside a document for which authority is vested only in the Civil Court. This is based on the analysis that a void document needs no adjudication and hence it is open to the consolidation authorities to ignore such a document and declare right, title and interest of the party. But if the document is voidable i.e. it is upto the party in question either to accept the document or to get it annulled, then it is only the Civil Court which can do it and the authorities under the Act cannot ignore such a document.

Examining the averments in the plaint in the light of the principle enunciated above, it is clear that the Plaintiff has filed the suit for a declaration that the documents are invalid and inoperative and do not affect her interest in the suit, properties. Sri B. Pal, learned Counsel for the Petitioners has sought to draw a distinction between misrepresentation regarding nature of document and misrepresentation regarding contents of a document. It is his submission that, while in the former case the document is void in the latter it is voidable. He has placed reliance on the decision of the Supreme Court reported in *Ningawwa Vs. Byrappa and Others*, in paragraph whereof it is observed:

The legal position will be different if there is a fraudulent mis-representation not merely as to the contents of the document but as to its character. The authorities make a clear distinction between fraudulent misrepresentation as to the character of the document and fraudulent misrepresentation as to the contents thereof. With reference to the former, it has been held that the transaction is void, while in the case of the latter, it is merely voidable.

According to Sri Pal since the Plaintiff (O.P. No. 1) has come with a case that she was given the impression that she was executing some documents authorising her son Defendant No. 1 to deal with the properties, the case is one of fraudulent mis-representation relating to the character of the documents. On reading of the averments of the plaint, it is not possible to say with certainty at this stage that fraudulent misrepresentation alleged by the Plaintiff is confined only to the

character or the documents sought to be impugned and not to their contents. On a perusal of the plaint it appears that there are averments also to the effect that Plaintiff being an illiterate lady was not explained the contents of the documents hence it is difficult at this stage to say with certainty that in the present case the documents in question do not need to be set aside.

5. In view of the aforesaid discussions, the revision is devoid of merit and the same is accordingly dismissed. In the circumstances of the case, both the parties are directed to bear their respective costs of this proceeding.