

(2017) 01 OHC CK 0087
In the Orissa High Court
Case No : O.J.C. No. 1168 of 1997

Dharanidhar Lenka (Dead) Abanti Lenka	APPELLANT
Vs	
Gajendranath Lenka (Dead) Annapurna Lenka	RESPONDENT

Date of Decision : 25-01-2017

Acts Referred:

Registration Act, 1908 — Section 17(2)
Transfer of Property Act, 1882 — Section 5

Citation : (2017) AIR(Orissa) 50 : (2017) 1 OJR 428

Hon'ble Judges : Mr. Biswanath Rath, J.

Bench : Single Bench

Advocate : M/s. B.H. Mohanty, D.P. Mohanty, J.K.Bastia, R.K. Nayak, B. Das, P. Sahoo, T.K. Mohanty and S. Burma., Advocates, for the Petitioner; M/s. S.K. Nayak, S. Dash, R.C. Singh(2) and B.D. Sahu, Advocates, for the Opposite Parties No. 1; M/s. D. Patra, P.K. Patra, P.C. Swain and A.K. Sahoo, Advocates, for the Opposite Parties 1(c) & 1 (e); M/s. B. Satpathy, B.N. Parida and K.K. Panda, Advocates, for the Opposite Parties 1(b), 1(f)

Final Decision : Allowed

Judgement

Biswanath Rath, J.—This writ petition is filed assailing the orders passed by the competent authorities in exercise of power under the O.C.H. & P.F.L. Act, 1972 vide Annexures-10 and 11.

2. Short background involved in the case is that the disputed property under Plot No. 697 in the 1930 Settlement record-of-right measuring Ac.0.28 decimals is the ancestral property. In 1986 settlement record-of right Ac. 0.17 decimals of land remained in Khata No. 35, Plot No.682 and balance Ac. 0. 11 decimals of land remained in Plot No. 682/985 under Khata No. 35 corresponding to Consolidation L.R. Plot No. 682 measuring Ac. 0.140 decimals. The petitioner and opposite party no. 1, who are two brothers are sons of Shyam Sundar Lenka, who had also other two sons, namely, Krupasindhu and Jagabandhu. Petitioner all through claimed that after the death of Shyam Sundar Lenka, an unregistered deed of acknowledgement giving a previous partition was executed between four

brothers and in the said partition, western Ac. 0.14 decimals fell to the share of the petitioner and the eastern Ac. 0.14 decimals fell to the share of the opposite party no. 1. It is contended that after this development, opposite party no. 1 sold several properties and the petitioner established the same by annexing some of the registered sale deed as Annexures-2, 3 and 4. 1986 record-of-right was prepared separately in accordance with the partition, though some record-of-right stood recorded jointly but with separate note of possession in accordance with the above partition. It is contended that though the petitioner was in possession of Ac. 0.140 decimals of land but in respect of Khata No. 35, note of possession was recorded indicating opposite party no.1 in possession of Plot No. 682, measuring Ac. 0.17 decimals whereas petitioner shown to be in possession of Plot No. 682/985 measuring Ac.0.11 decimals. But as a matter of fact the petitioner was in possession of Plot No. 682 whereas opposite party no.1 was in possession of Plot No. 682/985 and area of both the plots remained same as clearly appearing at Annexure-6. Petitioner claimed that he filed Objection Case No.292 of 1991 for correction of Hal record of right during consolidation operation. Inquiry was conducted by Amin evidencing possession of the petitioner in respect of Plot No.682 as a consequence of which claim of the petitioner was allowed by the Consolidation Officer. Opposite party no.1 preferred appeal. Appellate authority modified the order recording the land in respect of the petitioner vide L.R. Plot No.682 /985 in respect of Ac.0.125 decimals. Being aggrieved by this reduced recording of land in favour of the respective parties, petitioner preferred Consolidation Revision No.738 of 1994. Learned Commissioner, Consolidation dismissed the revision after holding that the oral partition cannot be accepted in absence of the registration of the same.

3. In assailing the revisional order, Sri D.P. Mohanty, learned counsel contended that the observation of the revisional authority that the unregistered partition deed of 1972 cannot be accepted as against law. The revisional authority has failed in appreciating the respective possession involving acceptance of unregistered partition deed and thereby arrived at the wrong and erroneous judgment. Relying on a decision in the case of Kale and others v. Deputy Director of Consolidation and others, reported in A.I.R. 1976 SC 807, Sri D.P. Mohanty, learned counsel appearing for the petitioner contended that the petitioner's stand gets the support of this judgment and under the circumstances, the revisional order should be set aside.

4. There is no appearance on behalf of the private opposite party no. 1. Sri Sahoo, learned State Counsel justifying the impugned revisional order contended that for the reasons assigned therein, there is no scope for interfering in the impugned order and the writ petition ought to be dismissed.

5. Considering the rival contention of the parties, this Court finds the petitioner has all through his case claiming right over Ac.0.140 decimals of land over Plot No.682 taking a positive plea all through that his claim is based on an unregistered partition between the parties. In attending to a question regarding

acceptability of an unregistered partition deed, the petitioner while advancing his argument regarding acceptance of such document, relied on a decision reported in A.I.R. 1957 (Madras) 472 and AIR 1966 (Patna) 179. During course of argument, petitioner also relied on a decision of the Hon''ble Apex Court in the case of Kale and others v. Deputy Director of Consolidation and others reported in A.I.R. 1976 SC 807. In Paragraph-10 of the above judgment, the Hon''ble Apex Court held as follows:

"10. In other words to put the binding effect and the essentials of a family settlement in a concretised form, the matter may be reduced into the form of the following propositions:

(1) The family settlement must be a bona fide one so as to resolve family disputes and rival claims by a fair and equitable division or allotment of properties between the various members of the family;

(2) The said settlement must be voluntary and should not be induced by fraud, coercion or undue influence:

(3) The family arrangement may be even oral in which case no registration is necessary;

(4) It is well-settled that registration would be necessary only if the terms of the family arrangement are reduced into writing. Here also, a distinction should be made between a document containing the terms and recitals of a family arrangement made under the document and a mere memorandum prepared after the family arrangement had already been made either for the purpose of the record or for information of the court for making necessary mutation. In such a case the memorandum itself does not create or extinguish any rights in immovable properties and therefore does not fall within the mischief of section 17(2) of the Registration Act and is, therefore, not compulsorily registrable;

(5) The members who may be parties to the family arrangement must have some antecedent title, claim or interest even a possible claim in the property "It which is acknowledged by the parties to the settlement. Even if one of the parties to the settlement has no title but under the arrangement the other party relinquishes all its claims or titles in favour of such a person and acknowledges him to be the sole owner, then the antecedent title must be assumed and the family arrangement will be upheld and the Courts will find no difficulty in giving assent to the same;

(6) Even if bona fide disputes, present or possible, which may not involve legal claims are settled by a bona fide family arrangement which is fair and equitable the family arrangement is final and binding on the parties to the settlement."

6. Considering the submission of the learned counsel for the petitioner, for the factual back drop of this case and after looking to the decision from paragraph-10 of the Hon''ble Apex Court referred to herein above, this Court finds there has been wrong appreciation on the question of acceptance of

unregistered partition deed by the revisional authority resulting thereby there is an illegal and erroneous judgment.

7. Under the circumstance while interfering in the Revisional order under Annexure-11, this Court sets aside the same and remits the matter back to the Revisional authority to re-hear the matter and take a decision considering the unregistered partition deed as a valid document for the partition and pass a fresh order in the revision within a period of four months but however giving opportunity of hearing to all concerned.

8. In the result, the writ petition stands allowed but with an order of remand. Under the circumstance, there is no order as to cost.