

(1989) 12 OHC CK 0022

In the Orissa High Court

Case No : Civil Revision No. 818 of 1989

Gadadhar Mishra

APPELLANT

Vs

Jagannath Mohaprabhu, Marfat Brajaraj Ramanuj Das

RESPONDENT

Date of Decision : 04-12-1989

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 47
Orissa Estates Abolition Act, 1951 — Section 5

Citation : (1990) 69 CLT 496

Hon'ble Judges : S.C. Mohapatra, J

Bench : Single Bench

Advocate : L. Mohapatra, D.K. Mishra and M.R. Mohanty, for the Appellant; S. Mishra, S. Mantry, R.C. Rath and A.K. Mishra, for the Respondent

Final Decision : Dismissed

Judgement

S.C. Mohapatra, J.—Judgment-debtor is the Petitioner in this Civil Revision. Alleging that Petitioner is a monthly tenant of the decree-holder in respect of a house governed under the Orissa House Rent Control Act, 1967 (hereinafter referred to as "the Act"), opposite party filed an application for eviction of the Petitioner. House Rent Controller held that Petitioner being a tenant is liable to be evicted whereas appellate authority held that there is no relationship of landlord and tenant. Against the said appellate order, opposite party preferred O.J.C.931 of 1980 to quash the appellate order and to restore the order of the House Rent Controller. In the writ application, it was asserted that the land over which the house stands, has been settled with the opposite party under the Orissa Estates Abolition Act. Relying upon the said assertion, this Court disposed of the writ application on 8-7-1988 quashed the application giving a direction that unless Petitioner gives possession of the house to the opposite party within six months the order of eviction passed by the controller shall be executed by the opposite party to get possession through Court. When Petitioner did not deliver possession as directed in the writ application, execution proceeding was initiated as provided under the Orissa House Rent Control Act.

2. In the Execution Proceeding, Petitioner filed an application u/s 47, CPC claiming that he has preferred appeal against settlement of the land in favour of the decree-holder which is pending and accordingly, Petitioner ought not to be evicted during pendency of the said appeal. Executing Court having rejected the petition, this Civil Revision has been filed by the judgment-debtor.

3. Mr. L.K. Mohapatra, learned Counsel for the Petitioner relied upon a decision reported in Jagannath Mahaprabhu Vs. Bidyut Sahoo, in support of the contention that executing Court is to stay its hand awaiting final disposal of the proceeding under the Estates Abolition Act.

4. In the reported decision, the question of pendency of a proceeding under the Orissa Estates Abolition Act during the eviction proceeding under the Orissa House Rent Control Act was not a subject matter of consideration. For the first time in the execution proceeding, such a fact was brought to the notice of the executing Court. In that context it was held that the executing Court ought to stay the proceeding, awaiting finality of the proceeding before the Estates Abolition Authorities. This decision is clearly distinguishable on facts since in the present case, order of eviction was based on the finality of proceeding under the Orissa Estates Abolition Act and the tenant who could have brought to the notice of the Court passing the order of eviction that an appeal was pending or he contemplates to file an appeal failed to press that fact in his favour. Even if such question would have been brought to the notice of the Court, the order of eviction despite the same might be a wrong order but cannot be said to be without jurisdiction. In such circumstance when executing Court cannot examine the correctness of the order of eviction as an appellate authority, there is no scope for staying the proceeding. Executing Court is correct in refusing the objection of the judgment-debtor in respect of executability of the decree at that stage.

5. Though it is not necessary to examine whether the decision reported in Jagannath Mahaprabhu Vs. Bidyut Sahoo, is correct, I may observe that the line of decision of this Court that on vesting under the Orissa Estates Abolition Act, proceeding by the intermediary in Civil Court cannot continue, requires reconsideration. As has been held in 1969 S.C.D.982 (Shivashankar Prasad Sah and Anr. v. Baikunth Nath Singh and Ors.) vesting and settlement are two separate transactions. On vesting title is extinguished but possession is not extinguished. Possession is to be taken by the State u/s 5(h) of the Orissa Estates Abolition Act. When possession of the intermediary continues, he can always protect his possession from being interfered with by others. In case, he permitted another to possess the property and despite withdrawal of such permission or violation of the terms of such possession, he would have right to agitate the question to get back his possession or to protect the same. However, such a question is not required to be decided in the present case.

6. In the result, Civil Revision is dismissed. No costs.

7. Revision dismissed.