

(2017) 01 CHH CK 0030
In the Chhattisgarh High Court
Case No : W.P. (227) No. 5873 of 2008

Ganesh Ram

APPELLANT

Vs

Raitu

RESPONDENT

Date of Decision : 03-01-2017

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 22 Rule 4

Citation : (2017) AIRCC 1059 : (2017) 2 CGLJ 296

Hon'ble Judges : Shri Sanjay K. Agrawal, J.

Bench : Single Bench

Advocate : Mr.B.P. Sharma and Mr. Hari Agrawal, Advocates, for the Petitioner; Mr.D.N. Prajapati, Advocate, for the Respondent No.1&2; Mr. Aditya Sharma, P.L, for the Respondent No.3

Final Decision : Allowed

Judgement

Shri Sanjay K. Agrawal, J.—In an application filed by respondents No.1 and 2 (aboriginal tribe), legal representatives of original land holder under Section 170-B of the Chhattisgarh Land Revenue Code, 1959 (hereinafter called as "Code"), the Sub Divisional Officer, Dhamtari by order dated 6.9.1995 dismissed the application holding that alleged transaction is valid and it is not hit by the provisions of Section 170-B of the Code.

2. Feeling aggrieved and dissatisfied with the order, respondents No.1 and 2 herein preferred an appeal before the Collector, Raipur. In the meanwhile, Lachhuram (uncle of the present petitioner) died on 26.1.1996, however, the present petitioner was not brought on record and by order dated 22.12.1997 the Collector directed for reversion of the land in favour of respondents No.1 and 2 herein.

3. The petitioner being legal representative of Lachhuram filed the revision before the Additional Commissioner, Raipur stating inter-alia that the order has been passed against dead person without impleading him as party and therefore,

the order be set aside. Since the post of Commissioner was abolished, the matter was transferred to the Board of Revenue. The Board of Revenue by order dated 25.1.2008 dismissed the revision. Feeling aggrieved against the said order, the petitioner herein filed this writ petition under Article 227 of the Constitution of India.

4. Mr.B.P.Sharma and Mr.Hari Agrawal, learned counsel appearing for the petitioner, would submit that the Board of Revenue has unjustified in upholding the order of the Collector passing the order of reversion of the land against dead person, therefore, the order impugned be set aside.

5. Mr.D.N.Prajapati, learned counsel appearing for respondents No.1 and 2 and Mr.Aditya Sharma, learned Panel Lawyer appearing for respondent No.3, would support the order impugned.

6. Shri Lachhram, predecessor-in-title of the present petitioner, was admittedly party respondent before the Sub-Divisional Officer, Dhamtari and when he died on 26.1.1996, the present petitioner was not brought on record and order of reversion was passed by the collector on 22.12.1997. The Board of Revenue did not correct it on being brought to notice by way of the revision.

7. Section 43 of the Code provides that unless otherwise expressly provided in this Code, the procedure laid down in the Code of Civil Procedure, 1908 shall, so far as may be, be followed in all proceedings under this Code. Thus, the provisions contained in Order 22 of the Code of Civil Procedure are applicable in the revenue proceedings also.

8. Their Lordships of the Supreme Court in the matter of Jaladi Suguna (deceased) Through LR's v. Satya Sai Central Trust and others, (2008) 8 SCC 521 have held that the provisions of Order 22 Rules 4 and 5 CPC are mandatory. It was observed as under:-

"16. The provisions of Rules 4 and 5 of Order 22 are mandatory. When a respondent in an appeal dies, the Court cannot simply say that it will hear all rival claimants to the estate of the deceased respondent and proceed to dispose of the appeal. Nor can it implead all persons claiming to be legal representatives, as parties to the appeal without deciding who will represent the estate of the deceased, and proceed to hear the appeal on merits. The court cannot also postpone the decision as to who is the legal representative of the deceased respondent, for being decided along with the appeal on merits. The Code clearly provides that where a question arises as to whether any person is or is not the legal representative of a deceased respondent, such question shall be determined by the court. The Code also provides that where one of the respondents dies and the right to sue does not survive against the surviving respondents, the court shall, on an application made in that behalf, cause the legal representatives of the deceased respondent to be made parties, and then proceed with the case. Though Rule 5 does not specifically provide that determination of legal representative should precede the hearing of the appeal

on merits, Rule 4 read with Rule 11 make it clear that the appeal can be heard only after the legal representatives are brought on record."

Their Lordships have further held in paragraph 17 that appeal being heard against a dead person is clearly impermissible in law and the entire judgment is a nullity and inoperative.

9. In the case in hand, Lachhuram died on 26.1.1996 during pendency of the appeal before the Collector and the Collector thereafter on 22.12.1997 passed an order of reversion against dead person. Thus, order against dead person without bringing the legal representatives was a nullity and the Board of Revenue has unjustified in dismissing the revision.

10. For the foregoing reasons, the order of the Collector, Raipur dated 22.12.1997 and order of the Board of Revenue dated 25.1.2008 are hereby set aside. The matter is remitted to the Collector, Dhamtari in which respondents No.1 and 2 will be at liberty to bring the legal representative of Lacchuram/ petitioner herein in accordance with law. If the respondents bring the legal representative of Lachhuram on record in accordance with law, the Collector, Dhamtari shall decide the appeal afresh within a period of 45 days from the date of substitution.

11. The writ petition is allowed to the extent indicated herein above. No order as to cost(s).