

(1976) 09 OHC CK 0012

In the Orissa High Court

Case No : Civil Revision No. 128 of 1975

Gangadhar Sahu and Others

APPELLANT

Vs

Chintamani Sahu and Others

RESPONDENT

Date of Decision : 07-09-1976

Acts Referred:

Orissa Consolidation of Holdings and Prevention of Fragmentation of Land Act, 1972 —
Section 3, 4(4), 41, 5(1), 51

Citation : (1976) 42 CLT 1218

Hon'ble Judges : P.K. Mohanti, J

Bench : Single Bench

Advocate : N.P. Parija, for the Appellant; K.M. Swain, for the Respondent

Final Decision : Allowed

Judgement

P.K. Mohanti, J.—This Civil Revision is directed against an order u/s 4(4) of the Orissa Consolidation of Holdings and Prevention of Fragmentation of Land Act.

2. The Plaintiff-Petitioners filed Title Suit No. 2 of 1974 to set aside a compromise decree on the ground of fraud and for: further reliefs for declaration of title to and confirmation of possession or in the alternative recovery of possession of 2.22 acres of land and for a permanent injunction restraining the Defendants from interfering with their possession. It was alleged that the Defendants opposite parties had filed Title Suit No. 2 of 1970 for declaration of their right of way over plot No. 760 in khata No. 829 of mouza Talabasta under Banki P.S. The Plaintiffs Petitioners were Defendants in that suit. The suit having been decreed, they filed Title Appeal No. 18 of 1972 in the Court of the District Judge of Cuttack. At the intervention of the local gentlemen, a compromise was entered into between the parties according to the terms of which the Defendants opposite parties were allowed a right of way over an area of Order 04 acre of land appertaining to plot No. 1630 and the Plaintiffs Petitioners got 0.01 acre of land out of C.S. plot No. 2316. But the Defendants opposite parties by gaining over the scribe fraudulently got it written in the compromise petition that they would get 2.22 acres of land

appertaining to plot No. 529) in khata No. 1630 though these lands did not form the subject- matter of that suit.

3. During the pendency of the suit a notification u/s 3 of Orissa Act 21 of 1972 was published in the Gazette declaring that village Talabasta, in which the land in dispute is situate, had come under the consolidation operations. Consequently, the Defendants-opposite parties filed an application u/s 4(4) of the Act for an order being passed by the Court that the suit stood abated. The learned Munsif by his order dated 4-1-1975 came to the finding that the main reliefs claimed in the suit were to be decided by the consolidation authorities and that the Civil Court's jurisdiction was barred. Accordingly, he held that the suit stood abated upon the publication of the notification. It is against this order that the present Civil Revision has been preferred.

4. The relevant portion of Sub-section (4) of Section 4 of Act 21 of 1972 runs as follows:

4. Effect of notification: Upon the publication of the notification issued under Sub-section (1) of Section 3 in the Official Gazette the consequences as hereinafter set forth , shall, subject to the provisions of this Act, ensue in the consolidation area till the publication of notification u/s 41 or Sub-section (1) of Section 5, as the case may be

xx xx xx

(4) 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 started 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.

5. Section 51 of the Act provides:

Notwithstanding anything contained in any other law for the time being in force but subject to the provisions contained in Sub-section (3) of Section 4 and Sub-section (1) of Section 7

(1) all questions relating to right, title, interest and liability in land lying in the consolidation area, except, those coming within the jurisdiction of Revenue Courts or authorities under any local law for the time being in force, shall be decided under the provisions of this Act by the appropriate authority during the consolidation operation; and

(2) no Civil Court shall entertain any suit or proceeding in respect of any matter which an officer or authority empowered under this Act is competent to decide.

6. It is clear from the above provisions that the Civil Court's jurisdiction to entertain suits involving declaration of rights and interest in land has been barred for the duration of consolidation operations. The consolidation authorities having

been clothed with the powers to decide such questions in the course of consolidation proceedings.

7. In the case at hand, the main relief claimed by the Plaintiffs is to set aside the compromise decree passed in Title Appeal No. 18 of 1972 on the ground of fraud. The further reliefs claimed by them cannot be granted unless the compromise decree is set aside. The consolidation authorities have no power to set aside a compromise decree. They cannot decide the right, title and interest in the suit land so long as the compromise decree is not set aside by a Court of competent jurisdiction, In the case of Gorakh Nath Dube v. Hari Narain Singh and Ors. AIR 1975 S.C. 2451, their Lordships held that a distinction is to be made between cases where a document is wholly or partially invalid so that it can be disregarded by any Court or authority and one where it has to be actually set aside before it can cease to have legal effect and that where there is a document the legal effect of which can only be taken away by setting it aside or its cancellation, it could be urged that the consolidation authorities have no power to cancel the deed. The legal effect of the compromise decree in Title Appeal No. 18 of 1972 can only be taken away by setting it aside and the consolidation authorities have no power to set aside the same. The learned Munsif erred in law in holding that the suit had abated u/s 4(4) of the Act.

8. In the result, the Civil Revision is allowed and the order of the learned Munsif is set aside. Parties to bear their own costs. Title Suit No. 2 of 197-1 be restored, to file status quo ante.