

(2001) 03 OHC CK 0008
In the Orissa High Court
Case No : O.J.C. No. 5868 of 1994

Gokul Chandra Kanungo

APPELLANT

Vs

State of Orissa and others

RESPONDENT

Date of Decision : 26-03-2001

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 47
Constitution of India, 1950 — Article 226 , 227

Citation : (2001) 92 CLT 63 : (2001) 1 OLR 583

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

Bench : Single Bench

Advocate : M/s J.N. Ray and Mrs. P. Nayak, for the Appellant; Additional Government Advocate, for the Respondent

Judgement

P.K. Misra, J.—The recalcitrant attitude of opposite parties in the face of decision of the Civil Court has given rise to the filing of the present writ application seeking for a direction to the opposite parties to hand over the possession of the disputed land and building as described in the writ application and to pay Rs. 30,000/- towards maintenance and repair charges and Rs. 80,512/- towards illegal occupation of the house and further pay at the rate of Rs. 544/- per month till the actual eviction.

2. It is not necessary to notice the long history in this case. Suffice it to say that the petitioner had purchased the disputed house and the land from the previous owner Satrughna Malla in the year 1954 and subsequently, he had filed Title Suit No. 165 of 1961 for title and recovery of possession. While declaring the title of the petitioner and directing recovery of possession, the trial court also enjoined the Tahsildar, Kujang, and the State of Orissa from disturbing the petitioner's possession. It is claimed that the petitioner took possession through the Court on 28-8-1965. It is further claimed that the Consolidation Officer took the house on a monthly rent of Rs. 544/- by entering into an agreement which was allegedly signed by Shri Bijaya Kumar Malla, the successor-in-interest of Sri Satrughna

Malla. The petitioner claims that the aforesaid Bijaya Kumar Malla was the power-of-attorney holder of the petitioner. Since the possession was not delivered and certain other disputes cropped up, the petitioner again filed Title Suit No. 86 of 1982 impleading the State of Orissa through the Revenue Secretary, the Collector, Cuttack, the Commissioner, Land Reforms, the Sub-Divisional Officer, Jagatsinghpur, Tahasildar, Manijanga and the Consolidation Officer, Tirtol, as defendants. The suit was for recovery of possession. The suit was decreed on contest against defendants 2 and 5, that is to say, the Collector and the Tahsildar, Manijanga, and ex parte against the other defendants. The defendants were directed to deliver possession of the disputed house within a month. The order was passed on 18-9-1993. The petitioner claims that in spite of such decree, instead of vacating possession, the defendants have tried to set up other officers with a view to deprive the petitioner of the fruits of the decree obtained by him.

3. Counter affidavit has been filed by the Assistant Consolidation Officer (Technical) in the office of the Consolidation Officer, Kujang, on behalf of opposite party No. 2, that is to say, the Consolidation Officer, Tirtol. In the said counter, the right of the petitioner is being challenged once again. It has been stated that the Consolidation Officer had delivered the possession to one Rama Khuntia, who, was the agent of B. K. Malla, the previous owner of the house, from whom the house had been taken on rent. It is also claimed that in a ceiling proceeding, the property had been vested in the State Government.

4. It is surprising that a Government/Officer has chosen to take such a stand in the face of a decree passed by a Civil Court. Even the deponent had the audacity to aver-

".....Regarding the result of, the suit and the judgment dated 8-10-64 the opp. party No. 2 had no knowledge as he was neither a contesting party to the above suit nor the order of judgment was communicated to him."

conveniently forgetting the fact that the State and the Collector were parties to the suit.

5. A perusal of the judgment passed by the Civil Court indicates that the order passed by the Ceiling authorities was also brought to the notice of the Civil Court, but the Civil Court found that the order was without jurisdiction and notwithstanding such ceiling order had passed the decree. The present opposite parties were parties to the said suit. Whatever may be the right of B. K. Malla, who had not been impleaded as a party in the subsequent suit, the present opposite parties obviously cannot ignore the decision of the Civil Court, which is binding on them, on some fanciful pretext having not challenged the decision of the Civil Court in appeal or any other competent forum.

6. Even though the aforesaid position cannot be disputed, I am afraid that it would not be appropriate to grant the reliefs claimed by the present petitioner in the present writ application. The petitioner has the option of executing the

decree passed by the Civil Court. The learned counsel for the petitioner has expressed apprehension that it may take a long time. He has relied upon the decision of the Andhra Pradesh High Court reported in 1994 1 C C C 451 (Kasani Subbama v. The Government of A. P.), wherein the High Court in a proceeding under Article 227 of the Constitution had directed for execution of a decree without directing the parties to take resort to the Civil Court on the ground that the remedies available in Civil Court for the execution were in efficacious. It is, no doubt, true that in many cases in the executing court inordinately long time is taken. That, however, cannot be a ground to grant relief in the writ application, as in such an event, the parties instead of approaching the Civil Court to pursue remedies available under the law, would rush to the High Court in every case, thus adding to the alarming pendency position in the High Court. Judicial notice can be taken of the fact that in the High Court lots of old cases are still pending and it would not be prudent to entertain such matters where the alternative statutory remedy is available.

7. Having regard to the facts and circumstances of the case, I dispose of the writ application with a direction that the petitioner should seek his remedy by filing appropriate Execution case and if any such petition is filed, the same should be disposed of by the Executing Court in accordance with law as expeditiously as possible, preferably within a period of six months from the date of filing of the execution case.

8. There will be no order as to costs.

9. Writ application disposed of.