
(2021) 10 OHC CK 0075
In the Orissa High Court
Case No : Writ Petition (Civil) No. 45 Of 2009

Gundam Manga Raju

APPELLANT

Vs

Tirthabasi Mohapatra (Since Dead) Through Lrs And Others

RESPONDENT

Date of Decision : 28-10-2021

Acts Referred:

Code of Civil Procedure, 1908 — Section 141, Order 1 Rule 9

Citation : (2021) 10 OHC CK 0075

Hon'ble Judges : Dr. S. Muralidhar, CJ; B.P. Routray, J

Bench : Division Bench

Advocate : P.K. Kar, D.K. Nayak, D.K. Mohanty

Final Decision : Allowed

Judgement

B.P. Routray, J

1. The dispute pertains to an extent of land measuring area Ac.19.55 decimals of mouza-Chakuli under Attabira P.S. The direction of the learned Single Judge dated 21st February, 2008 for recording half share of the land in favour of Respondent No.2 has been assailed in the present appeal.

2. The admitted facts of the case are that, the then Gountia namely, Gangadhar Satapathy settled the land in favour of Abhimanyu Das by Gountia Lease Patta dated 6th November, 1943 which was later confirmed by the Member, Board of Revenue in Revenue Appeal No.98/53/54. Said Abhimanyu Das sold the land in question to Tirthabasi Mohapatra and Dhirabati Mohapatra (Respondent No.1 and 2, who are husband & wife) vide Registered Sale Deed (RSD) No. 985, dated 4th April, 1960. Subsequently Tirthabasi along with Abhimanyu sold the land to G. Janaki Rama Rao (Respondent No.7), G. Gani Raju and another vide RSD No.2670, dated 30th March, 1963.

3. When the consolidation operation started in the area, Objection Case Nos.181, 183, 184, 185 and 186 of 1981 were filed by the Respondent No.7. Objection Case No.182/1981 pertaining to area Ac.1.50 decimals out of total Ac.19.55

decimals was filed by the present Appellant. It is the case of the Appellant that she purchased the aforesaid land from her vendor - G. Gani Raju vide RSD No.2255, dated 9th September, 1980. The Consolidation Officer rejected all the objection cases by common order dated 26th February, 1982. Being aggrieved by the order of the Consolidation Officer, the Appellant filed Appeal Case No.139/1982 and Respondent No.7 filed Appeal Case Nos. 134/1982, 135/1982, 136/1982, 137/1982, 138/1982 and 140/1982 before the Deputy Director, Consolidation of Holdings, Sambalpur. All those seven appeals were allowed by a common order dated 29th January, 1983 with the direction to record the purchased lands separately in the name of respective purchasers. As such final consolidation patta was issued in favour of the Appellant in respect of her land measuring area Ac.1.50 decimals in Consolidation Khata No.214.

4. Being aggrieved by the order of the appellate court, Respondent Nos.1 and 2 filed revision before the Joint Commissioner, Settlement and Consolidation, Sambalpur in C.R. Case No.27/329/1984 which was dismissed. It was then challenged by Respondent Nos.1 and 2 before this Court in OJC No.7198 of 1998. The learned Single Judge by order dated 21st February, 2008 allowed the writ petition in favour of Respondent Nos.1 and 2. The relevant portion of the said order is reproduced below.

"6. Heard learned counsel for the parties at length. Perused all the materials including the impugned order. Fact remains, the petitioners by a joint regd. Sale deed purchased the lands way back in the year 1960. The lands having been acquired by them they should be treated as co-tenants or joint owners. Only because petitioner No.2 is the wife it cannot be presumed that she was a benamidar. After abolition of benami transaction, such a presumption is also not in consonance with law. However, fact remains Dhirabati-Petitioner No.2 has not alienated her share. Thus OP No.4 having purchased the land from petitioner No.1 by the regd. Sale deed on 03.05.1963 acquired only the share of Tirthabasi-petitioner No.1. He cannot put any claim on the share of Dhirabati.

In view of the aforesaid clear position of law, this Court has no hesitation to set aside the order passed by the Commissioner and directs accordingly. Consequently, it is held that Dhirabati-Petitioner No.2 being the owner in respect of the half of the lands purchased by her and she having not executed any sale deed the said lands should be recorded in her favour.

With the aforesaid observation the writ petition is disposed of.

The Consolidation Officer, Atabira is directed to record the lands in favour of petitioner No.2 in consonance the observations in this order."

5. It is submitted on behalf of the Appellant that, Respondent Nos.1 and 2 preferred the revision as well as the writ petition without impleading her as a party. Despite the fact apparent on record that the revisional order dated 23rd February, 1998 is against the order passed in Appeal Case No.139/1982 filed by the present Appellant, the learned Single Judge has passed the impugned order

in absence of necessary party. It is further submitted that since the purchase of land extending Ac.1.50 decimals out of Ac.19.55 decimals by the Appellant is not disputed, she is a necessary party in the revision case as well as in the writ petition, and the impugned order of the learned Single Judge which has been passed in her absence is thus bad in the eye of law.

6. It is worthwhile to mention here that this Court by order dated 10th August, 2009 has directed to maintain status-quo in respect of the property in question.

7. Perusal of the records of the writ petition reveals that admittedly the present Appellant was not impleaded as a party in the writ petition. Similarly, the copy of the order of the Joint Commissioner in C.R. Case No.27/329/1984 as impugned in the writ petition does not reveal the name of the present Appellant in the array of parties therein. As seen from the order of the revisional court, it is observed at para-7 that, the revision is liable for rejection in absence of challenge to the order in respect of other Appeal Cases except Appeal Case No.134/1982. It is important to note here that the appellate order under challenge in the revision before the Joint Commissioner was the common order passed in seven Appeal Cases including the Appeal of present appellant. Despite such specific observations of the revisional court in the order impugned before the learned Single Judge, he proceeded to set aside the revision order in absence of the present Appellant. Undoubtedly the Appellant is a necessary party in the writ petition for he is affected by any such observations made regarding grant of 50% share in favour of Dhirabati (Respondent No.2). In other words, the order of the learned Single Judge has effectively set aside the appellate court's order dated 29th January, 1983 passed in Appeal Case No.139/1982 also (concerning present appellant).

8. In *Udit Narain Singh Malpaharia v. Board of Revenue*, AIR 1965 SC 786, the Supreme Court has explained the distinction between necessary party, proper party and proforma party and further held that if a person who is likely to suffer from the order of the court and has not been impleaded as a party has a right to ignore the said order as it has been passed in violation of the principles of natural justice. More so, proviso to Order 1 Rule 9 of the Code of Civil Procedure, 1908 provides that non-joinder of necessary party be fatal. Undoubtedly, provisions of C.P.C. are not applicable in writ jurisdiction by virtue of the provision of Section 141 C.P.C. but the principles enshrined therein are applicable. (See *Gulabchand Chhotalal Parikh v. State of Gujarat* [AIR 1965 SC 1153], *Babubhai Muljibhai Patel v. Nandlal Khodidas Barot* [(1974) 2 SCC 706] and *Sarguja Transport Service v. STAT* [(1987) 1 SCC 5])

9. It also appears from the record that the writ petitioners have misled the learned Single Judge by stating that all seven appeals were filed by Respondent No.7.

10. In view of the discussions made in the foregoing paragraphs, since the impugned order has been passed in absence of the appellant who is a necessary

party, the same is liable to be set aside on that score only. Accordingly, the order of the learned Single Judge dated 21st February, 2008 is set aside.

11. The writ appeal is allowed, but in the circumstances without any order as to costs.