

(2007) 06 OHC CK 0071
In the Orissa High Court
Case No : O.J.C. No. 7844 of 1995

Harihar Panigrahi and Others

APPELLANT

Vs

Commissioner, Consolidation and Others

RESPONDENT

Date of Decision : 18-06-2007

Acts Referred:

Orissa Consolidation of Holdings and Prevention of Fragmentation of Land Act, 1972 —
Section 41, 9

Citation : (2007) 2 OLR 334 Supp

Hon'ble Judges : A.S. Naidu, J

Bench : Single Bench

Advocate : R.N. Mohanty-2 and Associates, for the Appellant; D.B. Das and Associates for Opp. Party Nos. 5 to 11, for the Respondent

Final Decision : Dismissed

Judgement

A.S. Naidu, J.—The judgment passed by the Addl. Commissioner, Consolidation, Bhubaneswar in Revision Case No. 362/1993 confirming the order passed by the appellate Court is assailed in this writ application.

2. Bereft of unnecessary details, certain relevant facts which would be necessary for answering the questions raised are as follows:

The disputed lands along with other lands originally belonged to one Kanduru, S/o. Behari Maharana. Kanduri had four sons being Chintei, Ananda, Nanda and Kanda, who succeeded the properties left by their father. Thereafter they separated the properties and possessed the lands according to their allotments. Nanda, one of the sons of Kanduri, died in the year 1934 leaving behind his widow, Janaki Bewa. Janaki Bewa sold the lands in question by a registered sale deed in favour of Hadibandhu and it is alleged that from Hadibandhu the present Petitioners purchased the lands in the year 1951. Thereafter they remained in possession of the said lands exclusively by constructing residential house on a portion of the lands and by planting different varieties of trees on other portions. In the year 1971 disputes cropped with regard to the properties and it is

submitted that Hadibandhu filed Original Suit No. 49/1971 before then Subordinate Judge, Balasore inter alia praying for partition. The said suit was dismissed on the ground that Janaki had no saleable interest. F.A. No. 160/1974 preferred against the said judgment and decree abated in consonance with the provisions of Orissa Consolidation of Holdings and Prevention of Fragmentation of Land Act, 1972. Thereafter the Petitioners filed a petition u/s 9 of the Act before the Consolidation Officer, Simulia which was registered as Objection Case Nos. 506/1981 and 508 of 1981. The said objections cases were dismissed by the Consolidation Officer. Against the said order Consolidation Appeal No. 186/1981 was filed before the Deputy Director, Balasore. The appeal was allowed and the cases were remanded back to the Court of Consolidation Officer for fresh disposal. After remand the Consolidation Officer once again heard the parties and by order dtd. 27.1.1982 dismissed the objection cases. Challenging the said order the Petitioners again preferred an appeal before the Deputy Director, Balasore. The appeal having been dismissed, the Petitioners preferred Consolidation Revision No. 1265/1985 before the Commissioner, Consolidation. The Commissioner however allowed the revision and remanded the case to the Consolidation Officer once again.

3. The Consolidation Officer by his order dtd. 25.5.1990 again rejected the objection cases mainly on the ground that the vendor of the Petitioner had no alienable right. Against the said order, Consolidation Appeal No. 7/1990 was filed, but the Deputy Director dismissed the appeal mainly on the ground that by then the village in which the lands were situated had been denotified as per Notification u/s 41 of the Act. The order passed by the appellate authority was assailed before the Consolidation Commissioner in Consolidation Revision No. 362/ 1993. The Commissioner after hearing the parties disagreed with the findings of the Deputy Director that after issuance of De-notification no appeal was maintainable, but then on merits held that the vendor of the Petitioners had no alienable right nor had any share in the joint family property and thus by virtue of the sale deed the Petitioners had acquired absolutely no right, title or interest and refused to interfere with the order passed by the Consolidation Officer. The said order, as stated earlier, is assailed before this Court.

3. I have heard learned Counsel for the parties at length and perused the materials available. The only issue which needs to be determined in the present writ application is whether Janaki Bewa, the widow of Nanda Maharana, who had transferred the lands in favour of the father of the Petitioners had any alienable right over the properties. The Consolidation Officer after vivid discussion of the evidence adduced by the parties arrived at a conclusion that Nanda expired on 16.3.1934 leaving Janaki his widow and two daughters. Therefore Janaki being a pre-act widow had limited right/title in respect of the properties left behind by her husband. Even otherwise she had no right in respect of the entire property sold by her. Out of the properties a portion had been recorded as "DESAHATA JAGIRI" and in consonance with the Orissa Tenancy Act the said property was not alienable till occupancy right was acquired in consonance with the law. In the

case at hand, there was no material to reveal that in fact any application was filed to confer the status of occupancy right. There is also no evidence that after Nanda expired the Jagir lands were settled with Janaki by the Ex-Landlord. Thus this Court finds no error in the findings arrived at by the Consolidation Officer that Janaki had no right to transfer any land and she had acquired no interest. The only other point raised before this Court is that by virtue of the sale deed the father of the Petitioners and thereafter the present Petitioners are in occupation of the lands for more than statutory period and they have acquired title by adverse possession. But then this aspect was neither pleaded before the Consolidation authorities nor decided. Law is well settled that a person cannot be deemed to have acquired title by adverse possession and he who claims such title has to establish the same and obtain a decree from the competent Court. The Petitioners having not done so this Court cannot grant the relief sought in this writ application.

4. In view of the discussions made above, this Court finds that the Courts below have not committed any error apparent on the face of record and the impugned decision does not suffer from any infirmity nor the same is absurd. This Court declines to interfere with the same in exercise of Certiorari jurisdiction.

The Writ Application is accordingly dismissed.