

(2005) 10 OHC CK 0023

In the Orissa High Court

Case No : Writ Petition (C) No's. 2483, 2484, 2485, 2486, 2487 and 2488 of 2004

Hemanta Kumar Dwivedi and Others

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 24-10-2005

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Evidence Act, 1872 — Section 17, 21, 74

Orissa Survey and Settlement Act, 1958 — Section 12B, 15

Citation : (2005) 10 OHC CK 0023

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

Bench : Single Bench

Advocate : Jagannath Patnaik and S.K. Padhi, for the Appellant; D.P. Sahoo, S.K. Das, U.C. Panda, C.A. Rao, Y.S.R. Murty, S. Acharya, N. Singh, B.C. Pradhan and M.K. Das, for the Respondent

Final Decision : Dismissed

Judgement

A.S. Naidu, J.—The orders dated 8.1.2004 (Annexure-1 respectively in all the Writ Petitions) passed by the Joint Commissioner of Settlement and Consolidation, Sambalpur in R.P. Nos. 162-165 of 2003 in exercise of his revisional jurisdiction u/s 15(b) of the Orissa Survey and Settlement Act, 1958 (hereinafter referred to as "the Act") are assailed in these Writ applications mainly on the following grounds:

(a) The Joint Commissioner (Settlement and Consolidation), opposite party No. 2, has transgressed his jurisdiction not available under law and the findings recorded by him are not only perverse and illegal, but also nullities in the eye of law.

(b) Opposite party No. 2 by acting in any arbitrary manner and without application of judicial mind has decided the right, title and interest like that of Civil Court even though he was not competent to do so within the limited scope

under the Act and the Rules. Therefore the orders, Annexure-1 respectively, are per se perverse and illegal.

(c) The impugned orders are contrary to law, laid down by the Hon"ble Apex Court and this Court that the revenue authorities have no jurisdiction to decide right, title and interest of the parties in respect of the land except possession.

(d) Opposite party No. 2 without taking into consideration the materials on record which are basically public documents as per Section 74 of the Evidence Act has transgressed his limits by coming to the erroneous conclusion and directing opposite party No. 5 for correction of record-of-rights despite the fact that after the settlement proceedings and publication of draft record-of-rights in favour of the Petitioners and other members of the family the matter had reached finality and after expiry of the appeal period way back in the year 1982, there was no scope to disturb that settled position.

(e) Opposite party No. 2 without considering the admission of opposite party No. 6 before the Settlement authorities which was substantive evidence as per Sections 17 and 21 of the Evidence Act, decided right, title and interest in favour of opposite party No. 6 arbitrarily in clear violation of law resulting in evasion of justice and by the impugned orders, Annexure-1 respectively, opposite party No. 6 has been encouraged to disturb family peace and continuous co-existence prevailing for more than last twenty years after closure of the settlement proceedings and publication of record-of-rights.

(f) Opposite party No. 2 committed a serious error of law in misconstruing the admitted document of family arrangement dated 31.12.1965 as a gift deed although the said document was produced before the Asst. Settlement Officer by opposite party No. 6 and had adduced evidence to that effect and the Asst. Settlement Officer basing on the said arrangement and statement of opposite party No. 6 had passed order to that effect basing on which the disputed properties were recorded, but opposite party No. 2 under misconception treated the said document as a gift deed and has set aside the record-of-rights standing in the names of the Petitioners and further directed to record the entire land in favour of opposite party No. 6. Therefore, the said misconstruction of document vitiated the impugned orders.

(g) Opposite party No. 2 committed a serious error of law in passing the impugned orders, Annexure-1 respectively, referring to earlier two separate Revision Cases bearing Nos. 92/2002 and 96/2002 filed by opposite party No. 6, to which the Petitioners in these Writ applications were neither parties nor was any notice served upon them, but they knew about that only from the impugned orders. Opposite party No. 2 having referred to and acted upon the said collusive orders passed by the Commissioner of Land Records and Settlement, Bhubaneswar behind the back of the Petitioners had committed grave error of law resulting in serious miscarriage of justice.

2. As per the averments made, the Petitioners and the contesting opposite party

being Hindus are governed by Mitakshara School of Hindu Law. The properties in dispute were acquired from the joint family nucleus and were enjoyed by all the members of the family notwithstanding the manner of acquisition. Late Dinabandhu Dwivedi was the common ancestor of the family who had two sons, being Bidyadhar Dwivedi and Gopal Dwivedi. In consonance with an amicable partition between the two brothers, they were enjoying properties allotted to their respective shares. Bidyadhar happened to be the Headman of Mahuapali village and he was enjoying certain "Bhogra" lands in lieu of his aforesaid service. After death of Bidhadhar, his son Maguni became the successor of the properties and he also became the Headman of that village. He enjoyed the "Bhogra" lands. The lands which were in the possession of Bidyadhar were recorded in Raiyati Khata No. 108 under Sthitiban status. The lands possessed by Gopal, on the other hand, were recorded in Raiyati Khata No. 94 also under Sthitiban status. In the year 1952, it is alleged, Gopal intended to sell the lands appertaining to plot Nos. 466-469 and 471 under Khata No. 94 of village Mahuapali which exclusively belonged to him. Since the lands were adjacent to the dwelling house of Maguni, the latter purchased the same in the name of his minor son Umakanta, present opposite party No. 6, who was then aged four years. Maguni had two sons, namely, Somanath and Umakanta, both of whom were minors when the aforesaid lands were purchased. Subsequently two sons, namely, Girija and Dibyasankar, were born to Maguni. The family of Maguni owned about hundred acres of land in village Mahuapali and other nearby villages. He had sufficient income and the family had also sufficient funds to purchase the said lands.

3. In consonance with a Notification issued under the Land Acquisition Act, vast lands were acquired for establishment of Hindustan Steel Limited and some lands of Maguni were also acquired, compensation for which was received by Maguni. But then, it is alleged, subsequently due to non-utilisation of the lands acquired by Hindustan Steel Limited, the same were surrendered to Government. In 1959 Maguni was offered the dealership of Burma Shells which was subsequently renamed as M/s. Hindustan Automobiles, Bisra Road, Rourkela. The retail outlet and storage tank were installed and constructed on Sabik plot No. 467 comprising of Ac.0.67 decimals and the investment was from the joint family properties. As Maguni could not manage the said business alone, he required the assistance of Hemanta Kumar Dwivedi (Petitioner in W.P. (C) No. 2486/04) who was his eldest grandson and inducted him as a partner.

4. In the year 1965 an amicable family arrangement was made among the major married and unmarried sons and grand sons in respect of the family properties including the purchased properties and, it is alleged, an area of Ac.1.54 decimals appertaining to plot Nos. 466-469 was allotted to Umakanta (opposite party No. 6). The other properties were subsequently partitioned among the four sons of Maguni by a registered partition deed. While settlement operations started, the land was recorded in consonance with the family arrangement of the year 1965. The Settlement authorities caused enquiries and prepared the Yadust in

consonance with the Amin's report, field possession, etc. Hemanta, it is alleged, on verification notice that the area allotted to him was not as per his possession and the family arrangement. He therefore filed a petition before the concerned Assistant Settlement Officer which was registered as Objection Case No. 2503 of 1978/6 of 1993. The said Objection Case was disposed of in consonance with law and preliminary draft R.O.R. was published. No objection was filed to the said draft R.O.R. nor was any appeal filed. Finally the Settlement authorities published the final R.O.R. as per Section 12-B of the Act, vide Annexure-8. As per the said final R.O.R., separate possession of the parties in respect of different portions of the joint family lands were reflected. The name of Hemanta was recorded in respect of plot No. 351 Part under Khata No. 11. Hemanta then executed a lease deed in respect of the structure standing on his land in favour of M/s. Arora Brothers. While matter stood thus, in the year 2002, Umakanta, opposite party No. 6, created disturbance in the family and in connivance with the daughter of Gopal Dwivedi, brother of Bidyadhar, Girija Shankar Dwivedi tried to grab the property. Umakanta filed the Revision Case before the Settlement Commissioner to set aside the final R.O.R. of the year 1982. After filing of the aforesaid Revision Cases, dissensions cropped up among the family members and their relationship practically severed. The Joint Commissioner after hearing the parties and considering the materials available on record set aside the orders of the Assistant Settlement Officer in Objection Case Nos. 2503 of 1978/6 of 1993, 2504 of 1978/6 of 1994 and 2506 of 1978/6 of 1996, allowed Revision Case Nos. 162 of 2002 and 163, 164 and 165 of 2003, set aside the R.O.R. and directed the Tahasildar, Panposh to correct the records in consonance with the orders passed in the Revision Cases, vide respective Annexure-1.

5. After receiving notice, counter affidavits have been filed by opposite party No. 6 Umakanta strongly repudiating the allegations made in the Writ applications. It is also stated that the Writ applications are not maintainable and the Petitioners if aggrieved might file civil suits. The allegation that the properties were purchased in the name of a minor has been strongly repudiated and it is stated that the same was a sham transaction. According this opposite party, there was a full-fledged partition by metes and bounds and the parties are occupying their respective lands in consonance with the same, but suppressing the said facts the Petitioners could manage to get the disputed lands recorded in their favour during the settlement operations. On coming to know about such facts, Revision Cases were filed u/s 15(b) of the Act and the Joint Commissioner who heard the said cases after being satisfied that the R.O. Rs were not in consonance with law, set aside the same. It was further submitted that the Joint Commissioner has passed the orders in consonance with law and there was no illegality or irregularity therein.

6. A rejoinder affidavit has been filed by the Petitioners in reply to the counter affidavit of opposite party No. 6 more or less reiterating the averments made in the Writ applications and stating the Joint Commissioner failed to appreciate the facts and circumstances of the cases in proper perspective and the orders, vide

respective Annexure-1 are liable to be quashed.

A further counter has been filed by opposite party No. 6 has been filed repudiating the averments made in the rejoinder filed by the Petitioners.

A further affidavit was also thereafter filed by the Petitioners.

7. The aforesaid pleadings of the parties reveal that the controversies among the parties involve several disputed questions of fact and the parties are at daggers drawn. I have heard learned Counsel for the parties at length and have carefully perused all the materials on record. It is no more res integra that a record of rights prepared by the Settlement authorities neither create nor extinguish a title. In the case at hand, there are several allegations with regard to acquisition and possession of the disputed properties, devolving of interest with regard to "Bhogra" lands, settlement of the said "Bhogra" lands, alienations of the joint family properties in favour of minors, rights and liabilities of the co-sharers inter se, vis-a-vis the registered partition deed by which the properties were amicably partitioned among them, etc. The Joint Commissioner has dealt with most of the allegations of the parties while arriving at his conclusions. But then, as the findings of the Joint Commissioner can neither create nor extinguish any title to the properties, the controversy among the parties inter se have to be finally adjudicated by Civil Court.

8. In course of hearing, Mr. Jagannath Patnaik, learned Senior Advocate, strenuously referred to several documents the genuineness of which is strongly repudiated by Mr. D.P. Sahoo, learned Counsel appearing for opposite party No. 6. The genuineness of the said documents being disputed, the controversies cannot be effectually adjudicated by the Settlement authorities nor by this Court in exercise of jurisdiction under Articles 226 and 227 of the Constitution of India.

9. In view of the aforesaid discussion/observation, this Court refrains itself from delving into the disputed questions of fact, least it may amount to pre-judging the issues and feels it just and proper to direct the parties to approach the Civil Court for adjudication of their inter se disputes, and directs accordingly. It is needless to say that the orders of the Settlement authorities will be subject to decision of the Civil Court. All the Writ applications are accordingly disposed of.