

(1990) 03 OHC CK 0022

In the Orissa High Court

Case No : Civil Revision No. 283 of 1987

Jita Thapa and Others

APPELLANT

Vs

Bhagabatia Thapa and Others

RESPONDENT

Date of Decision : 01-03-1990

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115

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

Citation : (1990) 1 OLR 444

Hon'ble Judges : D.P. Mohapatra, J

Bench : Single Bench

Advocate : P.K. Misra, for the Appellant; A.K. Mahakur, for the Respondent

Final Decision : Dismissed

Judgement

D.P. Mohapatra, J.—The Plaintiffs in Title Suit No. 100 of 1985 now pending in the Court of the Munsif. Bargarh filed this application u/s 115 of the CPC assailing the order dated 22-12-1986 whereby the learned trial Judge rejected their application to stay further proceedings in the suit tin final disposal of the proceeding under the Orissa Consolidation of Holdings and Prevention of Fragmentation of land Act (hereinafter referred to as the Act").

2. The Petitioners filed the suit against the opp. parties with the prayer for a decree of mandatory injunction directing the Defendants to remove the obstruction of the Plaintiffs" passage to the suit land and for permanent injunction directing them not to interfere with their peaceful possession over the suit land and for damages etc. The opp. parties filed written statement refuting the claims of the Petitioners and praying for dismissal of the suit.

3. For the present purpose it is not necessary to set out in detail the averments in the plaint and the written statement. During pendency at the suit the area in which the suit land is situated came within the operation of consolidation scheme. Thereafter the Petitioners filed an application for stay of further

proceedings in the suit till final disposal of the proceedings under the Act on the sole ground that determination of the question relating to right, title and interest to the suit property was within competence of the authorities under the Act and therefore the suit should be stayed till disposal of the proceeding under the Act. The trial Court, on consideration, was not inclined to accept the prayer of the Petitioners and passed the impugned order rejecting the application.

4. It is not disputed before me that maintainability of the suit in the Civil Court was not affected by the provisions of Section 4(4) or Section 51 of the Act since it was a suit for injunction which relief was not available to be granted by consolidation authorities.

5. The learned Counsel appearing for the Petitioners urged that though the suit was filed for permanent injunction, since the question of right, title and interest in the suit and was relevant and material for disposal of the suit and that matter was within the jurisdiction of the authorities under the Act, the trial Court ought to have stayed the suit. Indeed it was his submission that in such a case the only course open to the trial Court was to await the final decision of the said authorities all the question of title to the property. He placed reliance on two decisions of this Court, viz. Banambar Tripathy Vs. Collector of Ganjam and Another, ; Panchu Das and Another Vs. Jata Behera and Others, .

6. On giving my anxious thought to the matter, I am able to accept the aforesaid contention. I have perused both the aforesaid decisions. In my view no support is available from them for the contention raised by the learned Counsel for the Petitioners. The position is well settled that the question of stay of suit is at the discretion of the trial Court. It cannot therefore be laid down as a general proposition of law that where in a suit for injunction or any other relief for grant of which there is no provision in the Act, a suit is filed in the Civil Court and the question of right, title and interest to the property incidentally arises for consideration therein the suit has to be stayed till the matter is determined by the authorities under the Act. Accepting such a proposition, in my view, will be putting unnecessary fetters on the jurisdiction of Court. The matter assumes particular importance in the background that a suit for declaration of right, title and interest to a property covered under the consolidation scheme is not entertainable by the Civil Court as provided u/s 51 of the Act and even pending proceedings are to abate on an order to that effect being passed by the Court as provided u/s 4(A) of the Act. It is only the suits in which the relief sought are not within the competence of the authorities under the Act that are to be entertained and disposed of by the Civil Court. Even in these circumstances if the power of the Civil Court to adjudicate the matter is fettered by laying down a general rule that it has to stay further proceedings in the suit if it is brought to its notice that the matter is pending before the statutory authority would not only defeat the very purpose of filing of such suits (particularly suits for injunction), will work out injustice to the parties but is likely to leave aggrieved persons without any forum for prompt redressal of their grievance. Therefore the contention of the learned

Counsel for the Petitioners that in the circumstances, as noticed earlier, the Civil Court is bound to stay further proceedings in the suit is not acceptable. That is not to say that the Civil Court has no jurisdiction or should not pass order of stay in any such suit. The discretion vested in the Court is to be judicially exercised.

7. The question that therefore, arises is whether the present case is a fit case for exercise of discretion to stay the suit. The discussions in the impugned order reveal that the Consolidation Officer had passed order negating the claim of the Petitioners to the suit property holding that they had no right, title and interest therein. The Petitioners urged that they were taking steps to challenge the order before the superior authority and till the matter is finalised proceeding in the suit should be stayed. In these circumstances if the learned trial Judge in exercise of his discretion refused to stay trial of the suit he committed no serious irregularity or illegality which occasions interference by this Court in revision. To hold otherwise will be according to the request for stay of the suit till the matter of right, title and interest is adjudicated finally by the authorities under the Act and if the parties choose to carry the matter further by High Court and the Supreme Court.

8. Coming to the two decisions on which reliance was placed by the learned Counsel for the Petitioners, in the case of Banambar Tripathy (*supra*) this Court held against the submissions made by the counsel in the present case. The Court clearly observed that when an officer of authority is not competent to grant a relief not having been empowered under the Act to do so a suit in the Civil Court is entertain able and where the relief's claimed can only be granted by the Civil Court but not by an Officer or authority under the Act, the suit does not abate. The Court further observed that it is elementary that an aggrieved party under our jurisprudence is not without remedy. The Civil Court has jurisdiction to entertain and try a lis unless its jurisdiction is ousted expressly or by necessary implication. In paragraph 9 of the judgment the Court observed that it may be possible to direct a party to get his rights adjudicated by the competent officer and seek the further relief on basis of the adjudication from the Civil Court and this would be possible if the suit is kept pending and not by abatement of the suit. This observation, in my view, is indicative of the position that whether further proceeding in the suit will be stayed awaiting adjudication by the consolidation authority will depend on the facts and circumstances of the case and it cannot be laid down as a general rule. To the same effect is the observation in the case of Panchu Das (*supra*) where this Court while holding that a suit for injunction does not abate u/s 4(4) and 51 of the Act observed that relief of injunction cannot be granted by the consolidation authorities. The suit to that extent cannot be thrown out. In case the relief cannot be granted without any finding on right, title and interest, the Court may consider to stay its hands awaiting the decision of the competent authority in that regard. It cannot dismiss the suit by attracting Section 51(5) of the Act since the question of injunction cannot be decided by the authorities under the Act.

9. Testing the present case on the touch-stone of the principles laid down in the aforementioned cases, the position is manifest that it was at the discretion of the learned trial Judge to consider the matter relating to the stay of further proceedings. As held by me earlier, in the facts and circumstances of the case, particularly in view of the position that Consolidation Officer had passed order regarding the question of right, title and inherent in the property, the learned trial Judge committed no error if he refused to stay further proceedings in the suit.

10. In the result, the revision petition being devoid of merit is dismissed, but in the circumstances, without any order for costs.

Revision dismissed.