

(2010) 06 OHC CK 0005

In the Orissa High Court

Case No : Writ Petition (C) No's. 4797 and 6394 of 2002 and 17562 of 2006

Khitramoni @ Khiramani Sahu and Others

APPELLANT

Vs

Joint Commissioner of Settlement and Consolidation and
Others

RESPONDENT

Date of Decision : 24-06-2010

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Orissa Consolidation of Holdings and Prevention of Fragmentation of Land Act, 1972 —
Section 11, 36

Citation : (2010) 110 CLT 446

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

Bench : Single Bench

Final Decision : Dismissed

Judgement

A.S. Naidu, J.—W.R(C) No. 4797 of 2002 is filed by Smt. Khitramoni @ Khiramani Sahu & 2 others assailing the Order Dated 28.2.2002 passed by the Joint Commissioner Settlement & Consolidation, Bhubaneswar in Consolidation Revision Case No. 234 of 2000 (Annexure-3). The Joint Commissioner by the aforesaid order confirmed the Order Dated 22.3.2000 passed by the Deputy Director, Consolidation, Baripada, in Appeal Case No. 32/99(B). The Dy. Director had reversed the Order Dated 15.10.1999 passed by the Consolidation Officer, Baisingha in Objection Case No. 432/1998.

W.P.(C) No. 6394 of 2002 is also filed by Khitramoni @ Khiramani Sahu assailing the same Order Dated 28.2.2002 passed by the Joint Commissioner Settlement & Consolidation, Bhubaneswar in Consolidation Revision Case No. 234 of 2000. The Joint Commissioner by the aforesaid order confirmed the Order Dated 22.3.2000 passed by the Deputy Director, Consolidation, Baripada, in Appeal Case No. 31/99(B). The Dy. Director had reversed the Order Dated 15.10.1999 passed by the Consolidation Officer, Baisingha in Objection Case No. 374/1998.

W.P.(C) No. 17562 of 2006 has been filed by Khiramani Sahu & 2 others assailing

the Order Dated 08.4.2005 passed by the Revenue Divisional Commissioner, Central Division, Cuttack dismissing the Revision Case No. 107 of 2003 filed u/s 36 of Orissa Consolidation of Holdings & Prevention of Fragmentation of Land Act, 1972 (hereinafter referred to as "the Act") thereby confirming the Order Dated 09.5.2002 passed by the Deputy Director, Consolidation, Baripada in Appeal Case Nos. 7 & 8 of 2001 as well as the Order Dated 25.4.2001 passed by the Consolidation Officer, Baisinga in Objection Case Nos. 647 of 2000 & 648 of 2001. The said Objection cases were filed by Opp. Party No. 4- Baidyanath Sahu & Opp. Party No. 5-Dasarathi Sahu respectively with a prayer to record the disputed lands appertaining to L.R Plot Nos. 184, 185, 186 & 188 out of L.R Khata No. 2 of Mouza - Jugal, measuring an area of Ac.1.71 decimals jointly with note of 50 % share in favour of each of the said Opp. Parties. The grievance of the Petitioners in this Writ Petition as well as the other two Writ Petitions in short is that Baidyanath Sahu & Dasarathi Sahu not being the members of the joint family of the Petitioners & proforma Opp. Parties are not entitled to any share in the disputed properties.

As the controversy in all the aforesaid three cases is identical & based on similar facts & point of law, with consent of Learned Counsel for the parties, the same are taken up for hearing together.

2. Bereft of unnecessary details the short facts, which would be necessary to appreciate inter se controversies, are as follows:

The disputed lands original belong to one Kunja Sahu, who died leaving behind two sons namely Bhubani & Haguru. Bhubani died leaving behind .2 sons & 3 daughters. The Petitioners are the legal heirs & successors of the three daughters, whereas the proforma Opp. Parties are the legal heirs & successors of two sons of Bhubani. Baidyanath Sahu is the son of Haguru. Dasarathi is alleged to be the son of Panu Sahu who according to the Petitioners is not related to the family of Kunja Sahu. It appears that Panu Sahu had adopted Baidyanath & thereafter Dasarathi was born to him. Baidyanath & Dasarathi being the sons of Panu had inherited the properties left by Panu Sahu in Mouza - Bhagirathipur. In the Consolidation operation also, lands of Panu Sahu were recorded in the name of Baidyanath & Dasarathi.

During Consolidation operation of village Baisinga, the lands in dispute, were recorded jointly in the name of Kunja Sahu, Khiramani Sahu & other proforma Opp. Parties. Being aggrieved by such joint recording Baidyanath filed several Objection Cases u/s 11 of the Act before the Consolidation Officer, out of which Objection Case Nb.647 of 2000 is one & relates to the disputed lands, Dasarathi also filed separate Objection Case in respect of the disputed properties which was registered as Objection Case No. 648 of 2000. In both the Objection cases Baidyanath & Dasarathi claimed to be the sons of Haguru & prayed to record 50 % of the disputed properties in their favour on the basis of the Registered Partition Deed dated 16.9.1969. According to them by means of the aforesaid Registered Partition Deed the joint family properties were partitioned by metes &

bounds between the sons of Bhubani & Haguru & each branch was allotted 50 % of the lands.

The Petitioners along with proforma Opp. Parties contested the said Objection cases & filed their reply taking the stand that the daughters of Bhubani i.e. the mother of the Petitioners having not signed the alleged Registered Partitions Deed nor any share having been allotted to their mother or them, the Deed of Partition cannot be accepted & is unenforceable in law & also not binding upon the Petitioners. It is further averred that Baidyanath having been adopted by Panu & Dasarathi being the natural son of Panu, they have no right, title & interest over the joint family properties. It further appears Dasarathi had also filed several Objection cases in respect of joint family properties situated in different other mouza's with a prayer to record the said lands jointly. The said Objection cases being disallowed by the Consolidation Officer, Dasarathi had preferred Appeal Nos. 31/99(B) & 32/99(B) before the Deputy Director, Consolidation. The Deputy Director allowed the appeal with a specific finding that Baidyanath & Dasarathi are the sons of late Haguru & the Partition Deed at best can be a voidable document as the same has not been declared void, it is binding upon the Consolidation authorities. The Petitioners being aggrieved by the said order preferred Consolidation Revision Nos. 234 & 235 of 2000 before the Joint Commissioner, Consolidation & Settlement, Bhubaneswar. The said revisions were dismissed. The order passed by the Joint Commissioner as stated earlier is assailed by the Petitioners in W.P.(C) Nos. 4797 of 2002 & 6394 of 2002.

3. Mr. Mishra, Learned Counsel for the Petitioners referring to the genealogy of the parties submitted that out of the two sons of Kunja i.e Bhubani & Haguru, the Petitioners & proforma Opp. Parties belong to the branch of Bhubani. Admittedly out of the properties of Kunja both his sons i.e. Bhubani & Haguru had 50 % interest. There is no dispute with regard to 50 % share of Bhubani which has been inherited by the Petitioners & other proforma Opp. Parties. The only dispute is with regard to 50 % share of Haguru. According to Mr. Mishra, Haguru had only one son i.e. Baidyanath but then he was adopted by Panu, who was not a member of the joint family of Kunja. Subsequently Panu was blessed with another son i.e. Dasarathi. Thus for all acts & purposes Baidyanath after his adoption lost his interest in the joint family properties. Mr. Mishra further submitted that in fact in course of Consolidation operation the properties belonging to Panu have been recorded jointly in the name of Baidyanath & Dasarathi. Thus the claim put forth by Baidyanath in respect of the joint family properties is devoid of any merit & the authorities lost sight of the said fact. It is stated that after death of Haguru his share of property was also inherited by the Petitioners & proforma Opp. Parties.

4. Mr. Mohanty, Learned Counsel appearing for Opp. Party No. 4-Baidyanath & Opp. Party No. 5-Dasarathi on the other hand repudiated the submission made by Mr. Mishra. According to Mr. Mohanty, by Registered Partition Deed executed on 16.9.1969 the joint family properties belonging to Kunja have been

partitioned & 50 % share out of the same was allotted in favour of Baidyanath & Dasarathi. Countenancing the submission of Mr. Mishra, it is submitted that only because the daughter of Bhubani had not signed the Partition Deed, the same cannot be treated as void document. At best, according to Mr. Mohanty, if Khiramani or any other rightful owner had not signed the Partition Deed which was a registered one then the said Deed becomes a voidable document. Law is well settled that the Consolidation authorities have no right to set aside a voidable document & are bound by the same & they can only avoid a void document. In view of the aforesaid clear position, it is submitted that the authorities have not committed any error. Mr. Mohanty further submitted that accepting the Partition Deed dated 16.9.1969 the Petitioners as well as other legal heirs of Bhubani have alienated some of the properties. Thus they are estopped from saying that the Registered Partition Deed is void. That apart perusal of the orders reveal that on the basis of the evidence adduced the Consolidation authorities have arrived at a conclusion that Baidyanath was son of Haguru. In other words the plea that he was adopted by Panu was negatived by the Consolidation authorities. The said finding of fact has been confirmed by the Deputy Director in Appeal as well as by the Joint Commissioner & Revenue Divisional Commissioner in revisions.

5. After hearing Learned Counsel for the parties & going through the orders passed by the Consolidation authorities, this Court finds that the Dy. Director as well as the Joint Commissioner & Revenue Divisional Commissioner have not committed any error apparent on the face of the record. The findings are based on cogent evidence & suffer from no infirmity. Law is well settled that while exercising power under Articles 226 & 227 of the Constitution of India, this Court do not act as an Appellate Court. The power conferred is in the nature of superintendence. The same has to be exercised sparingly only in special circumstances in appropriate cases. This Court can exercise its power under Articles 226 & 227 of the Constitution of India & quash an order passed by a Court/Tribunal if there is an apparent error or the findings of fact have been arrived at by non-consideration of the relevant & material documents. While exercising Certiorari power the findings of fact recorded by the authorities can be interfered with only if it is found that the same are either perverse or patently erroneous & de hors the factual & legal position on record. In other words the power under Articles 226 & 227 being a power of judicial superintendence should not be used to up-set conclusions of facts, howsoever erroneous those may be, unless such conclusions are so perverse or so unreasonable that no Court could ever have reached them. Analyzing the facts of the cases at hand on the basis of legal principles stated above this Court finds that the decisions taken by the Consolidation authorities are just, proper & needs no interference by this Court in exercise of power of superintendence.

Accordingly all the 3 Writ Petitions are dismissed.