
(2015) 02 OHC CK 0053
In the Orissa High Court
Case No : Writ Petition (C) No. 23942 of 2013

Kirtan Bihari Sahoo

APPELLANT

Vs

Dillip Ku. Maharana and Others

RESPONDENT

Date of Decision : 25-02-2015

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 13 Rule 8
Constitution of India, 1950 — Article 227
Stamp Act, 1899 — Section 33, 33(1-a)

Citation : (2015) 119 CLT 1062 : (2015) 1 ILR Ori 728

Hon'ble Judges : Sanju Panda, J

Bench : Single Bench

Advocate : Sunil Kumar Panda, K. Panda and P.C. Mishra, for the Appellant; S.K. Jena, S. Biswal and R. Mohanty, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Sanju Panda, J.—This Writ Petition has been filed by the petitioner challenging the order dated 03.9.2013 passed by the learned Civil Judge (Senior Division), Kenojhar in C.S No. 190 of 2010 rejecting an application filed to impound a document after receiving the penalty and stamp duty. The brief facts of the case are that opposite party No. 1 as plaintiff filed C.S No. 190 of 2010 before the learned Civil Judge (Senior Division), Keonjhar for declaration of right, title, interest and for permanent injunction over Suit Schedule-A property in respect of Plot No. 482 under Khata No. 58 measuring an area of Ac.0.25 decimals of Mouza - Alanapada. In the plaint it was stated that the plaintiff has purchased the said property by Registered Sale Deed dated 21.9.2007 and the Records of Right was issued in his favour in Mutation Khata No. 90/36. However, the defendants are obstructing him to go to his land by putting a fence in front of it having no right over the suit property.

2. After receiving notice the petitioner-defendant No. 2 appeared in the suit and filed written statement inter alia taking a stand that Suit Schedule-A property

was recorded in the name of one late Bhikari Barik. After his death, his widow Soudamini and two sons alienated the property in favour of one Bidyadhar Mahanta in the year 1977 and possession was delivered to the purchaser through the father guardian Kulamani Mahanta. The purchaser who is defendant No. 7 sold the property to one Rebati Sahu, wife of the present petitioner on 25.7.1990 by executing a "Chuktinama" and delivered possession after receiving the full consideration amount. Since then the petitioner is peacefully enjoying the same. It was also stated that the plaintiff has intentionally suppressed material facts regarding Civil Suit No. 38 of 2010 filed by him against one Gitanjali Mahanta to declare the Registered Sale Deed No. 1848 dated 11.12.2009 as null and void on the ground of misrepresentation of facts and to declare that he is the sole owner of the property. The petitioner also raised valuation of the suit property as the suit property was valued at Rs. 3,60,000/- in the Sale Deed executed in favour of Gitanjali Mahanta.

3. While matter stood thus the petitioner has filed an application on 10.5.2013 under Order 13, Rule 8 C.P.C. read with under Section 33 of the Indian Stamp Act, 1899 to impound a document i.e. a "Chuktinama" dated 25.7.1990 and to mark the same as exhibit. It was also stated that as the document was not properly stamped, the petitioner is ready and willing to pay proper stamp duty, if he will be directed by the Court. The plaintiff filed his objection to the said application stating that the alleged "Chuktinama" is a forged and fabricated document. The court below after hearing the parties by the impugned order rejected the said application with a finding that the document is not coming under the purview of Section 33(1-a) of Stamp Act with Orissa Amendment.

4. Learned counsel appearing for the petitioner submitted that in view of Section 33 of the Indian Stamp Act, 1899 when a document was produced before the court/authority a duty caste upon the said authority, if it appears to him that the same is not duly stamped to impound the same. However, the court below without applying its judicial mind rejected the application by the impugned order which need be interfered with. In support of his contention he has relied on the decision in the case of Avinash Kumar Chauhan Vs. Vijay Krishna Mishra, (2009) 1 JT 656 : (2009) 1 SCALE 80 : (2009) 2 SCC 532 .

5. Learned counsel appearing for opposite party No. 1 however supported the impugned order and submitted that the document in question was executed in the year 1990 and as the period of limitation was over to impound the same, the court below rightly rejected the application. Hence the impugned order need not be interfered with.

6. Considering the rival submission of the parties and after going through the materials available on record, it appears that it is not disputed that the so-called document "Chuktinama" is an agreement and not a Sale Deed though consideration amount was received and possession was delivered in presence of witnesses. The executant had put his signature on the Revenue Stamp and witnesses have also put their signature. The document was produced before the

court below on 10.5.2013 which is beyond the period of limitation. The Apex Court in the case of Avinash Kumar Chauhan (supra) has not considered the period of limitation as the document in question in the said case as produced before the court was of the year 2007 whereas the same was executed in the year 2006. Law is well settled that each case is to be considered on its own facts and circumstances and a little difference of facts have an impact on the decision. The court below has discussed regarding the period of limitation as stipulated under the Indian Stamp Act, 1899 as well as its amendment in respect of State of Odisha wherein sub-section (1-a) was inserted to Section 33 of the Principal Act, which stipulates that within three years from the date of registration of the instrument, on production of the same it is to be impounded if it appears to the authority that the instrument is not duly stamped. In view of the discussions made hereinabove and as there is no error apparent on the face of the record, this Court is not inclined to interfere with the impugned order in exercise of the jurisdiction under Article 227 of the Constitution of India. Accordingly this Writ Petition along with Misc. Case is dismissed.