
(1990) 04 OHC CK 0041

In the Orissa High Court

Case No : Original Jurisdiction Case No. 1550 of 1983

Kusum Jena and Others

APPELLANT

Vs

Nakhi Dei and Others

RESPONDENT

Date of Decision : 26-04-1990

Acts Referred:

Orissa Consolidation of Holdings and Prevention of Fragmentation of Land Act, 1972 —
Section 22

Citation : (1993) 2 OLR 449

Hon'ble Judges : J.M. Mahapatra, J;G.B. Pattnaik, J

Bench : Division Bench

Advocate : S.K. Dey, Y. Mohanty and B.B. Routray, for the Appellant; P. Mohanty and B.P. Roy and Addl. Standing Counsel, for the Respondent

Final Decision : Allowed

Judgement

G.B. Pattnaik, J.—This writ application is directed against the revisional order of the Commissioner annexed as Annexure-5 who, in the revision filed at the instance of the petitioners, has ordered that the hand should be recorded in the name of the opposite parties even though the opposite parties have never assailed the order of the Consolidation Officer as well as the order of the appellate authority.

2. The total consolidable land was 2.37 acres and the present dispute centres round 18 decimals of land appertaining to plot No. 49, in the land register the name of the petitioners had been noted in respect of the land in question, Opp. party No. 1 filed objection obviously u/s 9(1) of the Orissa Consolidation of Holdings and Prevention of Fragmentation of Land Act (for short "the Act"), inter alia, on the ground that kinei Rout who was also a member of the joint family had made an oral gift in favour of his wife Chani and pursuant to the said oral gift Chani was occupying the land as owner in possession thereof. Said Chani executed a registered deed of gift in favour of Nakhi, opp. party No. 1, in the year 1969. Though the record of rights of the year 1973 does not note Nakhi's

possession and, on the other hand, mentions the petitioners to be in possession of the land, but in view of the so-called gift by Kinei in favour of Chani and the subsequent gift by Chani in favour of Nakhi, the said Nakhi should be recorded in respect of the 18 decimals of land in question. The Consolidation Officer did not believe Nahki's possession over the land in question pursuant to the execution of the registered gift deed by her mother Chani. But as in the earlier record of rights the name of Chani had been mentioned, he directed that though separate record cannot be allowed in favour of Nakhi, but Nakni's possession be noted. Against this order the petitioners filed an appeal. The appellate authority has confirmed the same, the petitioner carried a revision. The revisional authority in the revision filed by the petitioner came to hold that opp. party No. 1 had a title over the land in question and therefore, directed that the land in question should be recorded in favour of Nakhi, she being the title holder in respect thereof. It is this order of the revisional authority which is being assailed in this writ application.

3. Mr. Dey, appearing for the petitioners, contended that the order of the Consolidation Officer negating the stand of opp. party No. 1 not having been assailed by opp. party No. 1 become final and, therefore the revisional authority had no jurisdiction to re-examine the matter and declare title in favour of opp. party No. 1 So far as the orders of the Consolidation Officer as well as that of the appellate authority is concerned, Mr. Dey contends that once Consolidation authorities came to a conclusion that the object had not been sole to establish the title, they had no further jurisdiction to direct that possession be recorded, since it is not a part of their duty to note possession only in respect of any particular land.

4. Mr. Ray, appearing for opp. party No, 1, on the other hand, contends that even though opp. party No. 1, had not preferred any appeal against the order of the Consolidation Officer, but in the revision filed by the petitioner, the Consolidation Commissioner was entitled to pass such appropriate orders as he thought fit in the facts and circumstances of the case, Therefore, the impugned order cannot be said to be without jurisdiction.

5. In view of the rival contentions, the short question that arises for our consideration is whether the revisional authority was justified in declaring the title of opp. party No. 1 in a revision filed by the petitioners, even though, the said title had been negated by the Consolidation Officer, which has been affirmed by the appellate authority, and opposite party No. 1 had never assailed the same. Our answer to the aforesaid question is that the revisional authority had no such jurisdiction to declare title of opp. party No. 1 when that title had been negated by the Consolidation Officer and the said opp. party No. 1 and never filed any appeal nor even invoked the suo motu jurisdiction of the Consolidation Commissioner. It is the petitioners who had assailed the order of the Consolidation Officer being aggrieved by the fact that the said Consolidation Officer had directed that possession of Nakhi be recorded. Therefore, the

grievance before the appellate authority as well as the revisional authority was whether the Consolidation Officer had any jurisdiction to note possession after being rejected the claim of title. In that view of the matter, the impugned order of the revisional authority is wholly without jurisdiction. Mr. Dey's contention on this score must accordingly succeed.

6. The other question which crops up for our consideration is whether the Consolidation Officer as well as the appellate authority was entitled to direct that the possession of opp. party No. 1 be noted after having rejected opp. party No. 1's claim of title in respect of the land in question. There is no manner of doubt that the Consolidation authority after rejecting the title of a dispute is not entitled to direct that the possession alone be noted. The power of the Consolidation authority under the Act is not akin to that of the settlement authority under the Orissa Survey and Settlement Act. Under the Settlement Act, the Settlement authority is required to find out who is in possession on the date the record of rights is prepared, and is in no way concerned with the title of the person concerned, whereas under the Consolidation Act, the Consolidation Officer is required to find out the right, title and interest and pass appropriate orders thereon and is not in any way concerned with the possession on the date of notification under the Consolidation Act.

7. In view of the above, the orders of the Consolidation Officer as well as that of the appellate authority must be held to be without jurisdiction. The impugned orders under Annexures-3, 4 and 5 are therefore quashed and the writ application is allowed, but in the circumstances, there would be no order as to costs. The petitioner is directed to file necessary requisites for issue of writ by 30-4-1990.

J.M. Mahapatra, J.

8. I agree.