

(2008) 09 OHC CK 0087
In the Orissa High Court

Lingaraj Rout and Others

APPELLANT

Vs

State of Orissa and Another

RESPONDENT

Date of Decision : 17-09-2008

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 9 Rule 13

Citation : (2008) 2 OLR 949

Hon'ble Judges : M.M. Das, J

Bench : Single Bench

Judgement

M.M. Das, J.—Heard Dr. A.K. Rath, learned Counsel for the petitioner and Mr. B. Dash, learned Counsel for the State.

The petitioners in a suit for declaration of title obtained a decree from the competent Civil Court. Basing on the said judgment and decree, they filed Mutation Case No. 1978 of 2001 before the Tahsildar, Bhubaneswar. The said Mutation Case having not been attended to, being aggrieved by the inaction of the Tahasildar, the petitioner approached this Court previously in W.P.(C) No. 14974 of 2005. This Court by order dated 05.02.2007 disposed of the said writ application directing as follows:

Considering the limited nature of grievance of the petitioners, this writ petition is disposed of with a direction upon the Tahasildar, Bhubaneswar to dispose of the said Mutation Case No. 1978 of 2001 within a period of three months from the date of communication of this order in accordance with law by affording an opportunity of hearing to the petitioners. The petitioners shall appear before the Tahasildar, Bhubaneswar on 26.2.2007 and produce a certified copy of this order and thereupon the Tahasildar shall act in accordance with the direction given in this order.

2. After issuance of the said direction, the Tahasildar took up, the Mutation Case and has passed an order on 05.05.2007 whereunder he directed as follows:

Since in the instant case Government have preferred appeal against the ex parte

order passed in T.S. No. 209 of 1988 the Mutation prayed for in this case is .abated awaiting the order of Hon"ble Civil Judge (Sr. Division), Bhubaneswar in M.C. Appeal Case No. 12/04 arising out of T.S. No. 209/88.

Dr. Rath, learned Counsel for the petitioners submits that the Tahasildar could not have abated the Mutation Case by stating that it has to wait till the Civil Judge (Sr. Division), Bhubaneswar passes. an order in the Misc. Cases filed by the defendants under Order IX Rule 13 of the CPC for setting aside the ex parte decree. He further points out that the Tahasildar instead of mentioning that the said petition filed by the State (defendant) is an application under Order IX Rule 13, C.P.C. has wrongly mentioned it to be M.C. Appeal Case No. 12/04, whereas the same has been numbered as C.M.A. No. 12/04, which is pending before the Civil Judge (Sr. Division), Bhubaneswar filed by the defendant-State to set aside the ex parte decree passed in T.S. No. 209/8?. The above submission with regard to the error in recording the number of the case is correct as the Tahasildar has wrongly mentioned the case number as M.C. Appeal Case No. 12/04 in stead of CMA No. 12 of 2004.

3. Mr. B. Dash, learned Additional Government Advocate vehemently argued that the Tahasildar has taken note of the fact that the G.A. Department is the owner of the land, which was not a party in the said Civil Suit and the ex parte decree having been sought to be set aside in CMA 12/04 pending-before the learned Civil Judge (Sr. Division), Bhubaneswar, the Tahasildar is right in not proceeding with the Mutation Case awaiting for the final order in the said application to be passed by the Civil Judge.

The mutation manual provides that mutation can be allowed and correction of record of rights can be made on the basis of transfer of title by virtue of register deed of conveyance or on the basis of decree passed by a competent Civil Court. An ex parte decree cannot be construed to be not a decree of the competent civil Court. In ordinary course, the Tahasildar should have proceeded in the mutation case basing on the ex parte decreepassed in favour of the petitioner and in the event mutation would have been allowed and record would have been corrected, if ultimately, the ex parte decree would have been set aside and if on rehearing the suit the same would have been dismissed, the defendant should have approached the Tahasildar to re-correct the Record of Rights.

4. But, however, considering the facts of the present case that a petition is pending under Order IX Rule 13 to set aside the ex parte decree in favour of the writ petitioner, though stated to have been filed after more than 10 years by Dr. Rath, learned Counsel for the petitioner, this Court feels it appropriate that the Mutation Case should await result of the said Misc. Case. In the event, the said application under Order IX Rule 13, CPC is disallowed, the Tahasildar will proceed with the Mutation Case immediately after intimation of such fact, basing on the ex parte decree in favour of the writ petitioner. However, in the event the said application is allowed and the ex parte decree is set aside, the Tahsildar is required to wait till disposal of the suit afresh and proceed with the Mutation

Case in accordance with decree to be passed by the Civil Court.

For the ends of justice this Court feels it appropriate to direct the learned Civil Judge (Sr. Division), Bhubaneswar to dispose of the C.M.A. No. 12 of 2004 arising out of T.S. No. 209 of 1988 by the end of December, 2008. The Tahasildar will thereafter proceed in accordance with the observation. It is made clear that the learned Civil Judge (Sr. Division), Bhubaneswar while disposing of the application under Order IX Rule 13, C.P.C. shall not be influenced by any observations made above.

The writ petition is disposed of accordingly.

Urgent certified copy of this order be granted on proper application.