
(2003) 04 OHC CK 0043
In the Orissa High Court
Case No : Civil Revision No. 199 of 2002

Mohan Biswal

APPELLANT

Vs

Sri Gopinath Dev and Others

RESPONDENT

Date of Decision : 24-04-2003

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115
Orissa Consolidation of Holdings and Prevention of Fragmentation of Land Act, 1972 —
Section 51

Citation : (2003) 2 OLR 16

Hon'ble Judges : P.K. Tripathy, J

Bench : Single Bench

Advocate : A.K. Rath and S. Mohanty, for the Appellant; S.K. Das, B. Mohapatra, S.K. Mishra, S. Das and A. Dhalsamanta, for the Respondent

Final Decision : Allowed

Judgement

P.K. Tripathy, J.—Heard.

2. This civil revision is directed against the order of injunction passed by learned District Judge, Puri in Misc. Appeal No. 14 of 2002 by reversing the order of refusal of injunction by learned Civil Judge (Junior Division), Puri in Misc. Case No. 167 of 2000. The admitted position on record is that the Record of Rights prepared by the Consolidation Authorities stands in the name of the defendant/petitioner. It is stated at the bar that there is no dispute on the position of the revenue record that the disputed land has been recorded as a homestead land. When the Civil Judge refused to grant interim injunction on the basis of the Record of Right prepared by the Consolidation Authority, learned District Judge has set aside that order and issued the order of temporary injunction on the ground that disputed property is a homestead land and the basis of entry in the consolidation R.O.R. in favour of defendant as a tenant is not clear.

3. Learned counsel for the petitioner argues that order of temporary injunction will result in eviction of the defendant when the consolidation records stand in his

name showing a prima facie case of possession in his favour and the suit for permanent injunction is still subjudice. On the other hand learned counsel for the opposite party/plaintiff argues that the basis for making entry in the revenue record being not well found that petitioner is a tenant, therefore the consolidation R.O.R. does not protect the defendants nor it gives rise to a presumption of possession in favour of the defendant and under such circumstance the order of the appellate Court is not to be interfered with.

4. On due consideration of the contention of both the parties and keeping in view the provision in Section 51 of the Orissa Consolidation of Holdings and Prevention of Fragmentation of Land Act, 1972 (in short "the Act") it is seen that the jurisdiction of the Civil Court has been barred relating to decision on dispute relating to all questions involving right, title, interest and liability on any land situated within the consolidation area. At the stage of consideration of the prayer for temporary injunction, the Court is to take a prima facie view and not to enter into arena of controversy or dispute which can only be properly adjudicated on acceptance of valid evidence in course of trial of the suit. The contention of the parties in support of their respective claims may have merit but such issue can be gone into and adjudicated only at the time of hearing of the suit. When the defendants have been recorded as the tenants admitting the plaintiff as their owner and there is no valid proof of their eviction in any legal mode, the order of temporary injunction is a harsh remedy against them merely on the basis of the factum that the consolidation patta does not mention the basis of the tenancy. When the order passed and on that basis Record of Right prepared by the Consolidation Authority is not under challenge before any competent authority and the suit is pending for permanent injunction in the Civil Court, the R.O.R. prepared by the Consolidation Authorities has to be respected until it is found to be illegal or incorrect. Therefore, the learned District Judge without visualising the provision of law appropriately has acted illegally and passed order of temporary injunction. Accordingly, the same is set aside and the Civil Revision is allowed.

5. It is stated at the Bar that the suit be directed to be disposed of expeditiously. Both the parties agree to co-operate. Hence learned Civil Judge (Junior Division), Puri is directed to dispose of the suit, as far as practicable, within a period of six months from the date of receipt of a copy of this order and to report compliance.