
(1998) 10 OHC CK 0005

In the Orissa High Court

Case No : Miscellaneous Appeal No. 61 of 1996

Orissa State Financial Corporation Ltd.

APPELLANT

Vs

Shyam Sundar Rath

RESPONDENT

Date of Decision : 28-10-1998

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 58

Citation : (1999) 1 OLR 131

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

Bench : Single Bench

Advocate : B.H. Mohanty, S.C. Mohanty, J.K. Bastia, R.K. Nayak, B. Das and D.P. Mohanty, for the Appellant; B. Mishra, R. Mishra, B.B. Mishra, M.C. Jena and S. Jena, for the Respondent

Judgement

P.K. Misra, J.—This appeal has been filed by the decree- holder challenging the order of the executing Court allowing the application of the respondent under Order 21, Rule 58 of the Code of Civil Procedure.

2. The judgment-debtor is the grandson of the respondent. It is claimed by the respondent that the property subjected to attachment is his own property, not liable to be attached in the execution against the judgment-debtor. It has been further claimed that a part of the property, having been sold to a third party, could not have been attached. The executing Court has found that the property included in Lot No. 1 was the self-acquired property of the applicant. It further found that though Lot No. 2 was the ancestral joint family property and was liable for attachment, the judgment-debtor did not have 1 /6th interest therein. The aforesaid order is being challenged by the decree-holder.

3. So far-as Lot. No. 1 is concerned, it is not disputed that the said property had been acquired in the name of the objector. The genealogy relating to the family of the objector had been filed before the executing Court. The said genealogy is extracted hereunder :

Shyam Sundar Rath | _____
 _____ | | | | | Nrusingha Prafulla Nisha (dead)
 Rama(R) Arnapura Kalpana(D) | | (daughter) 3 sons (D) 2 sons & 2 sons & | |
 1 daughter 1 daughter | | | |
 _____ | | | |
 _____ | | | |
 | | | Bichitrnanda Jayaprakash Satyaprakash | | | |
 _____ | | | |
 | Jyotiprakash Priyambada Anusuya Debasandhya | (D) (D) (D) | _____
 _____ | | | |
 | Rajendra Sourendra Jayanti Jayashree Jyostna Rajashree (daughter) (D) (D)
 (D)

The executing Court in its order has observed :

".....The above genealogy has not been challenged by the learned Advocate for the OP....."

In course of hearing of this appeal, the learned counsel for the appellant has not challenged the correctness of the aforesaid genealogy. It is evident that the objector was the "Karta" of the family. It is of course true that there is no material on record to show that the joint family had sufficient nucleus from the surplus of which the property in question could have been purchased. However, since the objector was the "Karta" and there is no material on record to indicate that he had any separate income, it can be presumed that the property was purchased out of the joint family nucleus and, as such, was joint family property. Subsequently, after the vesting, the property has been settled with the objector, as envisaged in Sees. 6 and 7 of the Orissa Estates Abolition Act and, as such, the settlement must ensure to the benefit of all the co-sharers. Admittedly, there has been no partition in the family of the objector. As a matter of fact, the son of the objector examined as P.W. 1 has stated about the joint possession and has further stated that the properties have not been partitioned. Thus, it is concluded that though the property was purchased by the objector and was settled and recorded in his name, the same was joint family property and, as such, the judgment-debtor had interest in the said property.

4. The next question is what would be the interest of the judgment- debtor in Lot No. 1 which is now found to be joint family property and Lot. No. 2 which has already been found to be joint family property by the executing Court. Since the genealogy has not been disputed, the contention of the decree-holder that the judgment-debtor had 1/6th interest is definitely not correct and on the basis of the genealogy it is apparent that the judgment-debtor had 1/15th interest in both the properties.

5. In view of the aforesaid discussion, the impugned order is liable to be modified. It is made clear that the 1/15th interest of the judgment- debtor in the joint family property as described in Lot. Nos. 1 and 2 would be liable to be

attached and sold in execution. The execution case is to proceed accordingly. There will be no order as to costs.