

(1995) 10 OHC CK 0007

In the Orissa High Court

Case No : Original Jurisdiction Case No. 3160 of 1988

Panchei Bewa (deceased) and after her Kunamani Sahoo and Others APPELLANT

Vs

Iswar Chandra Sahoo and Others RESPONDENT

Date of Decision : 18-10-1995

Acts Referred:

Orissa Consolidation of Holdings and Prevention of Fragmentation of Land Act, 1972 — Section 51

Citation : (1996) 1 OLR 17

Hon'ble Judges : P.C. Naik, J;A. Pasayat, J

Bench : Division Bench

Advocate : B.M. Patnaik, D. Patra, D.A. Mohapatra, D.K. Ray, B. Brahmachari and A.K. Pradhan, for the Appellant; U.C. Panda, for O.P. 1, S.P. Misra, Additional Govt. Advocate for OPs. 3 to 5 and R.K. Mohapatra, for O.P. 2, for the Respondent

Judgement

A. Pasayat, J.—The controversy in the present writ application lies within a very narrow compass. The authorities under the Orissa Consolidation of Holdings and Prevention of Fragmentation of Land Act 1972 (in short "the Act") held that the question relating to "adoption" has to be adjudicated by the Civil Court, and the results are to be reflected in the orders to be passed by the consolidation authorities. The revisional authority, the Commissioner, Consolidation, opp. party No. 3, in the revisional order (Annexure-14) held that the results of civil suit bearing No. 169 of 1985 pending before the Subordinate Judge, Puri, (as the Presiding Officer was designated then) would have binding effect.

2. The position as to which forum has jurisdiction to decide questions relating to adoption was in a fluid stage. In Puni Bewa and Anr. v. Ananta Sahoo and Ors. : 47(1979) CLT 494, Pranabandhu alias Panu Ojha v. Bhikari Maharana alias Ojha : 57(1984) CLT 65 and Krushna Chandra Nayak alias Mohanty and Ors. v. Nisamani Bewa 61(1936) CLT 564, this Court looked at the controversy from different angles. In Puni Bewa's case (supra), a learned Single Judge observed that the Consolidation Officers have not been vested with power to give a

declaration of status or to set aside a decree or order of a competent Court. In Pranabandhu's case (supra), it WAS observed that the consolidation authorities exercised special jurisdiction conferred upon them by the statute. They are competent to adjudicate upon right of interest in land. The question of status of a person does not relate to any right or interest in land. It was specifically held that the consolidation authorities have no jurisdiction to decide the question of adoption. In Krushna Chandra's case (supra), it was observed that where question of states is involved in the suit. . consolidation authorities could not have granted the relief claimed since the authorities under the Act have no jurisdiction to decide status.

3. It has to be noticed here that the case at hand also involves a disputed claim relating to adoption.

4. The controversy relating to jurisdiction was set at rest by a Division Bench of this Court in Jairam Samantray Vs. Baikuntha Samantaray and Others, . It was held that except in cases where title is claimed on the basis of transactions inter vivos, in most of the cases, title is claimed on the basis of relationship, say as son, father, mother, husband or wife etc. Each such question of relationship is a question pertaining to legal character or status. Where the consolidation authorities are deciding the question of status but a declaration of the law to the effect that the consolidation authorities have no Jurisdiction to decide the question on adoption, if such question arises ancillary or incidentally for adjudication of right, title and interest in property, is unsupportable.

5. Section 51 of the Act which is of a primary importance in the case reads as follows :

"51. Bar of Jurisdiction of Civil Courts--Notwithstanding anything contained in any other law for the time being in force, but subject to the provisions contained in Clause (3) of Section 4 and Sub-section (1) of Section--7.-

(1) all questions relating to right, title, interest and liability in land lying in the consolidation are except those coming within the Jurisdiction of Revenue Courts or authorities under any local law for the time being in force, shall be decided under the provisions of this Act by the appropriate authority during the consolidation operations, and

(2) no Civil Court shall entertain any suit or proceedings in respect of any matter which an officer or authority empowered under this Act is competent to decide."

6. Having regard to the objects and purpose of the enactment and the unambiguous words of wide multitude, it is not open to constrict the field of operation by any, pre-conceived notions. Questions relating to right, title, interest and liability in respect of the land which forms subject-matter of adjudication by the consolidation authorities, are to be decided by the said authorities except those which can be decided only by the Civil Court and are, therefore, not adjudicable by them. In deciding questions of right, title, interest

and liability in land, questions and issues relatable thereto arise for decision. Such decisions depend to a great extent on the decision on the connected questions which have to be decided ancillary and incidentally. Sometimes, hurdles are created by Judgment or orders of the Court or a document, to secure relief. The suitor has to clear these hurdles and impediments. So long as the hurdles stand on the way of suitor, grant of relief is not possible and permissible. The Civil Court alone has jurisdiction to remove those hurdles by setting aside the Judgment or order or a document of transfer. It has to be borne in mind that a distinction has to be drawn between documents of transfer which are void and those which are voidable. The former category being non est can be ignored. But transactions, documents, Judgments or orders, which are not void ab initio, are to be avoided. To set aside such documents, transactions, Judgments or decrees which are voidable and need avoidance, jurisdiction vests only in Civil Court and not in consolidation authorities except in cases where title is claimed on the basis of transactions inter vivos. Questions of relationship assume great importance in such cases. Such questions relate to and pertain to legal character or status. These questions have to be adjudicated by the consolidation authorities who have jurisdiction. Adoption is one of the modes by which sonship is acquired. If a person claims to have title to the property as a son by adoption, the adjudication of such claim has to be by consolidation authorities.

7. The view of the authorities that question relating to adoption has to be decided by Civil Court is indefensible. Accordingly, we set aside the impugned orders passed by the consolidation officer, the Deputy Director of Consolidation and the Commissioner of Consolidation being Annexures 10, 11 and 14 respectively, and remit the matter back to the Consolidation Officer concerned (opp. party 5) to deal with the case of the parties afresh in accordance with law. The Consolidation Officer will do well to dispose of the proceedings as early as practicable in view of the fact that the matter is pending since long.

Writ application is allowed to the extent indicated above. No costs.

P.C. Naik, J.

8. I agree.