
(2005) 08 OHC CK 0008
In the Orissa High Court
Case No : O.J.C. No. 6688 of 1996

Parbati Panda and Others

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 19-08-2005

Acts Referred:

Orissa Survey and Settlement Act, 1958 — Section 32

Citation : (2005) 2 OLR 698

Hon'ble Judges : L. Mohapatra, J

Bench : Single Bench

Advocate : S.S. Das, B.R. Dash, S.K. Mishra and S. Mohanty, for the Appellant; S.P. Mishra, S. Mishra, S. Nanda, S.K. Nayak, S.C. Pradhan, K.K. Rout, B.K. Sahoo and Pravati Mishra for O.Ps. 3 and 4, for the Respondent

Final Decision : Dismissed

Judgement

L. Mohapatra, J.—The petitioners in this writ application challenged the legality of order passed by the Commissioner, Land Records and Settlement. Orissa in R.P. Case No. 556 of 1996 filed u/s 32 of the Orissa Survey and Settlement Act, 1958.

2. The opposite parties 3 and 4 filed a revision before the learned Commissioner u/s 32 of the Orissa Survey and Settlement Act against the order dated 30th December, 1995 passed by the Additional Settlement Officer, Cuttack in S.A. No. 470 of 1995 and the same having been allowed, the present writ application has been filed.

3. The case of the opposite parties 3 and 4 is that the properties in question stood recorded in favour of the common ancestor Khetra Panda. Late Khetra Panda had three sons namely, Dasarath, Indramani and Chandramani. Dasarath was given away on adoption and the other son Indramani as well as his wife died leaving behind no issue. The opposite parties 3 and 4 are the sons of Chandramani, who claim to have succeeded to the properties of Khetra and also claim exclusive title over the properties in question. During Khanapuri stage, the

suit plots were recorded in the name of petitioners 1 and 2. In view of the above, the opposite parties 3 and 4 filed five objection cases against recording of different Khatahs and two other objection cases were also filed by the purchasers. All the seven cases were heard together and the case of the opposite parties 3 and 4 were disallowed in a common judgment. Against the order passed in the above seven objection cases, one appeal was filed and the same having been dismissed, the revision was filed. It is further case of the opposite parties 3 and 4 that one Narayan Panda, who is the husband of petitioner No. 1 had filed Title Suit No. 99 of 1966 in the Court of the Munsif, Jajpur claiming to be adopted by Indramani through a registered adoption deed dated 24.6.1965. The said suit was dismissed and Title Appeal filed against the said judgment was also dismissed. Having lost in both the Courts, the said Narayan Panda fraudulently got deed of acknowledgement of adoption dated 4.11.1977 in his favour and on the basis of the same, claimed title over the properties. According to the opposite party 3 and 4, the said Narayan Panda having failed to prove adoption in the civil Court, could not claim title over the properties on the basis of the fraudulent deed of acknowledgement of adoption.

4. The present petitioners raised two objections before the learned Commissioner. The first objection is a technical one and was contended that against the order passed in seven objection cases, seven appeals and seven revisions should have been filed and, therefore, neither one appeal nor one revision is maintainable. The other objection raised by the petitioners was that after dismissal of Title Appeal, when Narayan Panda was contemplating to file Second Appeal, a compromise was arrived at between the parties and a deed of acknowledgement of adoption was executed on the basis of which the petitioners claim title over the properties. The said acknowledgement of adoption having been accepted by the Courts below, the revisional Court should have also accepted the same and disallowed the revision.

5. Shri S.S. Das, the learned counsel appearing for the petitioners first raised a technical objection about maintainability, which was also raised in the revision before the learned Commissioner. The aforesaid objection raised by the learned counsel was considered by the revisional Court and the revisional Court held that u/s 32 of the Orissa Survey and Settlement Act, the Board of Revenue had suo motu power to call for the records and correct any illegality even if an appeal is not preferred and, therefore, the above question of maintainability was answered in favour of the opposite parties 3 and 4. Shri Das relied on the decision of this Court in the case of Nityananda Panigrahi and Others Vs. Commissioner of Consolidation and Others, It was held by this Court in the aforesaid case that a Single writ petition seeking to quash different orders in different proceedings is not maintainable. There is no dispute about the said, principle. The present case is distinguishable since the sole question to be decided is as to whether the present petitioners can claim title over the properties on the basis of the deed of acknowledgement of adoption. Since this is the only question involved in all the objection cases and there is no other disputed question of fact, I am of the view

that the question of maintainability raised in this case is only a technical one and filing of one revision or appeal does not affect the ultimate decision on merit. I am, therefore, of the view that there is no substance in the aforesaid contention of the learned counsel for the petitioners.

6. So far as second ground is concerned, it was contended by Shri Das, the learned counsel appearing for the petitioners that a suit was filed by Narayan Panda claiming to be the adopted son of Indramani. The claim of adoption was disputed and accordingly an issue was framed and the said issue answered against Narayan Panda. In appeal, the said finding was also confirmed. When the said Narayan Panda was contemplating to approach this Court in Second Appeal, a compromise was arrived at between the parties and the deed acknowledging the adoption was executed. Referring to the said deed, which is annexed to the writ application as Annexure-2, it was contended by Shri Das in the deed of acknowledgement of adoption Indramani admitted adoption and a reference to the judgment of the Civil Court has also been made. It was further contended that in view of such admission in Annexure-2, the effect of the decree passed by the Civil Court is taken away.

7. Shri Mishra, the learned counsel appearing for the opposite parties 3 and 4 submitted that the effect of the decree cannot be taken by executing the deed and the only way to take away the effect of the decree is either by entering into a compromise in the proceeding itself or by setting aside the decree by approaching the Civil Court again.

8. The judgments of the Civil Court are filed by the learned counsel for reference. In the trial Court a specific issue was framed as to whether Narayan was adopted by Indramani or not. In paragraph-18 of the judgment, the trial Court held that evidence produced on behalf of the Narayan in proof of the story of adoption by and large does not represent substantial truth. Therefore, the irresistible inference is that the adoption of Narayan had never in fact taken place. The said finding of the trial Court was also confirmed in appeal. In view of the above finding that such adoption never took place, there is hardly any scope for execution of the deed of acknowledgement of adoption. Moreover, the said decree having not been set aside by any Court, the effect of the decree cannot, be taken away by execution of such deed. I am, therefore, of the view that the finding arrived at by the Commissioner in this regard is legal and justified.

9. Both the points raised by the learned counsel for the petitioners having failed, the writ application is dismissed.