

(2007) 07 OHC CK 0056

In the Orissa High Court

Patitapaban Prusty and Others

APPELLANT

Vs

Madhab Charan Khuntia and Another

RESPONDENT

Date of Decision : 13-07-2007

Acts Referred:

ORISSA CONSOLIDATION OF HOLDINGS AND PREVENTION OF FRAGMENTATION OF LAND Act, 1972 — Section 4(4), 51

Citation : (2007) CLT 136 Supp : (2007) 2 OLR 323

Hon'ble Judges : Sanju Panda, J

Bench : Single Bench

Judgement

Sanju Panda, J.—This Civil Revision is directed against the order dated 25.10.2006 passed by the learned Addl. Civil Judge (Senior Division), Puri in Civil Suit No. 79/288 of 2006-2004 wherein the petition filed by the defendants u/s 4(4) of the Orissa Consolidation of Holdings and Prevention of Fragmentation of Land Act, 1972 (in short "the Act") has been rejected.

2. The question that is to be determined in this case is whether the suit, as laid, abates under the aforementioned provisions of the Act.

3. The facts of the case are as follows;

The opposite parties being the plaintiffs filed the suit for declaration of right, title, interest and for permanent injunction, restraining the petitioner-defendants not to raise construction over the suit plot and not to change the nature and character of the suit properties. In case it is found that the plaintiffs are being dispossessed from the suit property during pendency of the suit, the possession may restore through Court. Plaintiffs suit is for declaration in respect of the six plots and they have averred in their plaint that those plots were originally belong to one Bimal Chandra Singh, executrix, Rani Harsha Mukhi Dasi. The status of the land was Anabadi under Sabik Khata No. 70, Plot No. 159 with an area of Ac.38.74 dec. and the said land was unused land. One Shyamapada Sinha requested the erstwhile proprietor to lease out the land in his favour and after getting the same he has reclaimed the land, made it fit for cultivation and

horticulture operation. The same land was vested with the Government in the year 1953. By the time of vesting Shyamapada Sinha was in peaceful possession of the land, he deemed to have been a tenant under the State and has acquired the "Raiyati Right". In the year 1963 Shyamapada Sinha in order to meet his legal necessity, sold the property to nine persons and delivered possession of the property and they effected registered partition deed defining their legitimate individual share. By virtue of the said partition one Bauribandhu Pradhan and Nakula Apat got five acres of land jointly out of which Bauribandhu Pradhan got only two acres and remaining three acres of land fell into the share of Nakula Apat. Nakula Apat has alienated half acre to Gauramani Dei and rest part to one Krushnapriya Choudhury. Plaintiffs specifically averred in their plaint that Nakula Apat purchased the share of Bauribandhu Pradhan on 22.12.1969 and after the death of Nakula Apat his son Kalu Apat inherited the property and the said Kalu Apat sold the said two acres of land to one Dinabandhu Dash by registered sale deed No. 658 dated 28.2.1974. Accordingly delivered the possession of the land to the vendee. Dinabandhu Das sold the same to the plaintiffs vide registered sale deed No. 1586 dated 17.5.1993. They have further stated that in the year 1977, the land was recorded in the name of Bauribandhu Pradhan in the R.O.R and taking advantage of said recording Bauribandhu Pradhan by suppressing the earlier sale, again sold the same land to one Gopinath Rana on 27.11.1979. When Gopinath Rana discovered that Bauribandhu Pradhan has no positive interest to sell the property as he had sold the land to Nakul Apat in the year 1969, in his turn Gopinath Rana subsequently sold the land to defendants by two different sale deeds dated 2.7.1986. Since Bauribandhu Pradhan has no legal entity to transfer again the same property in favour of Gopinath Rana subsequent alienation by Gopinath Rana in favour of the defendants is invalid and without any saleable interest. They further averred that the subsequent transfer by Bauribandhu Pradhan in favour of Gopinath Rana is a bogus transaction and the said sale deed has no valid sanction as the property has already been sold prior to that. Gopinath Rana and others in order to save the situation sold the same in favour of present defendant No. 1 under different sale deeds dated 2.7.1986 and the present defendants have not made any bona fide enquiry nor they have examined whether their vendor or its vendor's vendor had any saleable interest over the property to transfer. Hence the suit. The defendants have filed their written statements.

4. While the matter stood thus, the defendants have filed a petition u/s 4(4) of the Orissa Consolidation of Holdings and Prevention of Fragmentation of Land Act and stated that as the plaintiffs have described that the transaction made by Bauribandhu Pradhan is being a void transaction, the suit for declaration will abate in view of the consolidation operation started in the area where the suit property is situated. The petitioners have filed a copy of the gazette notification dated 22.9.1981 in support of their plea. Plaintiffs have filed their objection to the said petition and have stated that the dispute is not coming within the ambit of the Consolidation Act and the Consolidation Authority have no jurisdiction to

decide the same as the plaintiffs have prayed for the relief of permanent injunction.

5. The learned Court below rejected the said petition on the ground that from the description of the plaint, it is to be found whether the documents are void ab initio or voidable. This disputed point can be set at rest when the entire fact of challenge with regard to the sale transactions are clarified by the oral and documentary evidence of both the parties. Hence the plaintiffs suit cannot be abated merely because consolidation operation is going on in the locality.

6. The learned Counsel appearing for the petitioners has contended that the consolidation scheme having been enforced in the area in which the suit lands are situated and the relief for declaration being granted by the authorities under the Act, the suit will abate u/s 4(4) read with Section 51 of the Act. The learned trial Court has failed to exercise his jurisdiction in passing the impugned order. Therefore, the only question is to be determined in this revision, whether the suit will abate u/s 4(4) of the Act.

7. The principles of law which have to be taken as settled and which were also not disputed is that before determining the question of abatement of suit u/s 4(4) of the Act, the substance of the plaint has to be considered and for that purpose the plaint is to be read as a whole if the case made out and grounds of challenge stated in the plaint show that the document in question is void, then the authorities under the Act can ignore the document and decide the question of right, title and interest of the land and in such a case suit is to be held abated u/s 4(4) of the Act. If on the other hand the case stated in the plaint shows that the document being voidable has to be avoided, then the competent forum to annul the document is the civil Court and the authorities under the Act cannot declare the document null and void and in such a case the suit is maintainable in the Civil Court.

8. In the case of *Gorakh Nath Dube Vs. Hari Narain Singh and Others*, , the Apex Court ruled that there is distinction between cases where a document is wholly or partially invalid so that it can be disregarded by any Court or authority and one where it has to be actually set aside before it can cease to have legal effect as alienation made in excess of power to transfer would be to the extent of the excess power invalid, an adjudication on the effect of such purported alienation would be necessarily implied in the decision of a dispute involving conflicting claims to the rights or interests in land which are the subject matter of consolidation proceedings but where there is a document the legal effect of which can only be taken away by setting it aside or its cancellation, the consolidation authorities have no power to cancel the deed and therefore, it must be held to be binding on them so long as it is not cancelled by a Court having the power to cancel it.

9. In *Ningawwa Vs. Byrappa and Others*, , the Apex Court has observed that the authorities make a clear distinction between fraudulent misrepresentation as to

the character of the document and fraudulent misrepresentation as to the contents thereof. With reference to former, it was held that the transaction is void while in the case of the latter, it is merely voidable.

10. A Full Bench of this Court in the case of Duruju Mallik and etc. Vs. Krupasindhu Swain and Others etc., held that;

(i) if the matter can be gone by the consolidation authorities, then the suit in respect of the same would abate u/s 4(4) of the Act. The intention of the legislature is quite clear and is in conformity with the well recognized principle that two forums should not be dealing with the same matter, as in that case there is likelihood of inconsistent situation arising;

(ii) it is well known that a party cannot be non-suited when under the law he does not have any alternative forum for redressal of the grievances. When his rights are of civil nature, the reliefs which flow from such rights and which he is entitled to get should be available from the Civil Court where the officer or authority has not been empowered to grant the same;

(iii) where the grant of injunction depends upon the determination of the right or interest in any land situated within the consolidation area, the suit for permanent injunction may not be maintainable. In order to determine whether the suit for injunction simpliciter is maintainable or not, the substance of the pleadings has to be looked into and not merely the form of pleadings of the plaintiff alone or the prayer made by him. Each case is to be decided on the facts of its own.

11. Coming to the case at hand and on reading of the plaint in its entirety it is clear that the plaintiffs have challenged the sale deed executed by Bauribandhu Pradhan on the ground that he has no saleable right to transfer the land on the second time as he has already alienated the same earlier and the effect of such purported alienation would be necessarily implied in the decision of a dispute involve in conflicting claim of right, title or interest in the land which are the subject matter of consolidation proceeding and the authorities have the jurisdiction to decide the same u/s 51 of the Act which is read as follows;

Section 51 :- Notwithstanding anything contained in any other law for the time being in force but subject to provision contained in Sub-section (3) of Section 4 of Sub-section (1) of Section 7. "(1) All questions relating to right, title, interest and liability in land lying in the consolidation area except those coming within the jurisdiction of revenue Court or authorities under any legal law for the time being in force shall be decided under the provision of this Act by the appropriate authority during the consolidation operation and (2) any Civil Court shall entertain any suit or proceeding in respect of any matter which an officer or authority empowered under this Act is competent to decide.

This Section makes it clear that right, title, interest and liability in land lying in consolidation area shall be decided under the provisions of the Act and no civil Court shall entertain any suit or proceeding in respect of any matter which an

officer or authority empowered under the Act is competent to decide.

12. Therefore, to attract the bar u/s 51, party is to prove that the land is in consolidation area and in the present case the petitioner filed the notification u/s 4(1) of the Act. The consolidation operation started in the village where the disputed land situates and the consolidation authorities have the jurisdiction to declare right, title and interest.

13. The plaintiffs in their plaint averred that the sale deed dated 27.11.1979 executed by Bauribandhu Pradhan for second time is a void transaction. As such the consolidation authorities have jurisdiction to decide the dispute and declare the right, title and interest of the parties. The plaintiffs suit is not for injunction simpliciter and it depends on declaration of right, title and interest of the parties. In view of the settled position of law as discussed above, the suit for declaration of right, title and interest is not maintainable in the civil Court.

14. In the present case the plaintiff has prayed for declaration of right, title and interest and for permanent injunction and the Civil Court may direct that the trial of the suit shall remain stay until final adjudication of the right, title and interest by the exclusive authority under "the act" and basing on such finding the Civil Court is to consider the question of grant of relief of permanent injunction. In case either party filed application for stay of suit till disposal of the consolidation proceeding, the trial Court shall do well to stay the suit until final authority of consolidation decides the right, title and interest.

15. In view of the above, the impugned order dated 24.10.2006 passed by the learned Addl. Civil Judge (Senior Division), Puri in Civil Suit No. 79/288 of 2006-2004 is set aside. Plaintiffs suit for declaration of right, title and interest is abated and his prayer in the suit for injunction will lie over before the civil Court till disposal of the right, title and interest by the consolidation authority.

The Civil Revision is disposed of with no order as to costs.