

(1996) 08 OHC CK 0017

In the Orissa High Court

Case No : Original Jurisdiction Case No. 1200 of 1992

Prafulla Chandra Moharana

APPELLANT

Vs

State of Orissa

RESPONDENT

Date of Decision : 28-08-1996

Acts Referred:

Citation : (1996) 08 OHC CK 0017

Hon'ble Judges : S. Chatterji, J;Dipak Misra, J

Bench : Division Bench

Advocate : C.A. Rao, S.K. Purohit and S.K. Behera, for the Appellant; N. Prusty, Additional Government Advocate, for the Respondent

Judgement

S. Chatterji, J.—The petitioner in the present application under Articles. 226 and 227 of the Constitution of India challenges the order dated 5-1-1984 made by the Assistant Consolidation Officer, Mangalpur/Pipili in disposing of Objection Case No. 1205 filed u/s 15 of the Orissa Consolidation of Holdings and Prevention of Fragmentation of Land Act, 1972 (hereinafter referred to as "the Act"), copy whereof is Annexure-1, the order dated 28-8-1984 passed by the Deputy Director, Consolidation. Range-I, Bhubaneswar in Appeal Case No. 57 of 1984 u/s 12 of the Act, copy whereof is Annexure-2 and the order in Revision Case No. 662 of 1985 made on 8th October, 1990 by the Commissioner, Consolidation, Orissa, copy whereof is Annexure-3.

2. The petition is at the instance of Prafulla Chandra Moharana. Mr. C.A. Rao appears in support of the application and Mr. Prusty learned Addl. Govt. Advocate appears for the State. None appears for opposite party No. 5 in spite of notice.

3. In fact; Objection Case No. 1195 was filed u/s 15 of the Act by the Objector-Prafulla Chandra Moharana for recording L. R. Plot Nos. 1478-Ac,0.12 dec., 1467-Ac. 0.02 dec. corresponding to Sabik Plot No. 1260 (P)-Ac. 0.03 1/6 and Sabik Plot No. 2638 (P) Ac. 0.009/16 of village Khelaur on the basis of his purchase vide R. S. D. No. 2024 dated 22-8-1980 and objection case No. 1205 under the

said Act was filed for recording L, R. Plot Nos. 503, 511, 475, 1430, 1431, 1436, 500 and 501 corresponding to Sabik Plot Nos. 111, 354, 362, 340, 812, 813, 844, 356 respectively of village Khelaur on the basis of his purchase vide R. S. D. No. 2025 dated 22-8-1980. The objection cases were taken up and disposed of by a common judgment and order.

4. The only exception taken is that there is admittedly a registered deed of gift/ but the said deed of gift was not accepted on the finding that the same was not valid as it was not accompanied by delivery of possession. It is observed that mere registration of gift deed is not equivalent to delivery of possession and therefore, by the said document, title did not pass from the donor to donee. Objection Case No. 1195 was thus disallowed. The appellate authority has recorded that the sole question for consideration was as to whether the Consolidation Officer committed any error in disallowing the claim of the objector in respect of the land covered by the deed of gift. By quoting Section 122 of the Transfer of Property Act, the concept of acceptance by donee was considered. It is concluded that the impugned deed is a void document as the possession was not delivered and on that ground the appeal was dismissed. The revisional authority dismissed the revision case recording that in the instant case the deed of gift made by the donor was fraudulently executed. The case of fraud was considered and by discussing certain reported decisions, it was held that the circumstances leading to the deed of gift were not within the competence of the donor. From the deposition-of the petitioner and the witnesses it is found to be proved beyond doubt that the suit land is under the possession of the opposite parties and no title passed by deed of gift and the said deed of gift was void ab initio as it was executed by a Paradanashin illiterate lady.

5. We have heard Mr. C.A. Rao at length. We have perused the aforesaid orders. We cannot reconcile with the position that the trial authority, the appellate authority or revisional authority were justified in refusing to consider the deed of gift in the proper perspective. The document was not a void one. Had this been challenged before any appropriate and competent authority for setting aside the same, the matter would have been otherwise. Considering the entire approach of the authorities concerned as would be evident from the three aforesaid impugned orders, we are of the view that the entire decision making process has been vitiated. The entire approach regarding deed of gift is misconceived, resulting in failure of justice. Considering this aspect, we allow the writ application by quashing the aforesaid three orders. We make it clear that in case appropriate suit is filed challenging the deed of gift in accordance with law, the same would take its own course. There is no bar to record the names on the basis of the deed of purchase and the deed of gift. Recording such finding and observation, the writ application is disposed of and there shall be no order as to cost.

Dipak Misra, J.

6. I agree.