

(1983) 12 OHC CK 0020

In the Orissa High Court

Case No : Civil Revision No. 129 of 1983

Pranabandhu alias Panu Ojha

APPELLANT

Vs

Bhikari Maharana alias Ojha

RESPONDENT

Date of Decision : 14-12-1983

Acts Referred:

Orissa Consolidation of Holdings and Prevention of Fragmentation of Land Act, 1972 —
Section 3, 4, 4(4), 5(1)

Citation : (1984) 57 CLT 65

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

Bench : Single Bench

Advocate : P. Kar, for the Appellant; S.D. Das, for the Respondent

Final Decision : Allowed

Judgement

P.K. Mohanti, J.—This civil revision is directed against an order of abatement of the suit u/s 4(4) of the Orissa Consolidation of Holdings and Prevention of Fragmentation of Land Act, 1972 (hereinafter referred to as the Act).

2. The Petitioner brought O.S. No. 67 of 1979 in the court of the Subordinate Judge of Bhadrak for a declaration of his title to 2.91 acres of land consisting of agricultural and homestead lands for confirmation of possession or in the alternative for recovery of possession on adjudication that the Defendant is not the adopted son of Hadi Ojha. It was alleged that after the death of Hadi Ojha his share in the properties devolved on the Plaintiff by way of survivorship but the Defendant was claiming the share of Hadi Ojha falsely describing himself as his adopted son. The opposite party contended inter alia, that he was duly adopted as a son by Hadi Ojha who had executed a registered deed of acknowledgement of adoption in the year 1928.

3. During the pendency of the suit the disputed lands came under the consolidation operation on the publication of a notification u/s 3 of the Act. The Defendant filed an application for an order of abatement of the suit u/s 4(4) of

the Act. By order No. 40 dated 6-4-1982 Shri S.K. Panda, the then Subordinate Judge directed that the suit would abate only with regard to the prayer for declaration of title and possession over the paddy lands and that it would proceed with regard to the homestead lands as well as the question of adoption. By a subsequent order dated 31-1-1983 the present Subordinate Judge Shri D.K. Sahu directed that the entire suit would stand abated u/s 4 of the Act. Aggrieved by this order the Plaintiff has come up in revision.

4. Section 4(4) of the Act reads as follows:

Section 4(4). Every suit and proceedings for declaration of any right or interest in any land situate within the consolidation area in regard to which proceeding could be or ought to be started under this Act, which is pending before any Civil Court, whether of the first instance or appeal reference or revision shall on an order being passed in that behalf by the Court before which such suit or proceeding is pending, stand abated:

Provided that no such order shall be passed without giving the parties concerned an opportunity of being heard:

provided further that on the issue of a notification under Sub-section (1) of Section 5 in respect of the said area or part thereof (a) every order passed by the Court under Clause (4) in relation to the land situate in such area or part thereof as the case may be shall stand vacated and (b) all such suits and proceedings as are referred to in Clause (3) or Clause (4) which relate to lands situate in such area or part thereof, as the case may be shall be proceeded with and disposed of in accordance with the law as if they had never been abated:

Provided also that such abatement shall be without prejudice to the right of the person affected to agitate the right or interest which formed the subject matter of the said suit or proceedings, before the proper Consolidation authority in accordance with the provisions of this Act or the Rules made thereunder.

5. The Consolidation authorities exercise special jurisdiction conferred upon them by the statute. They are competent to adjudicate upon right or interest in land. The question of status of a person does not relate to any right or interest in land. Such a matter can be adjudicated upon only by regular Courts, and cannot be agitated in consolidation proceedings.

6. In the present case the issue regarding declaration of Plaintiffs title and possession in respect of the entire suit land depends on the adjudication of the question as to whether Defendant is the adopted son of Hadi Ojha or not. The Consolidation authorities have no jurisdiction to decide the question of adoption. Since the main relief claimed by the Plaintiff relates to the question of adoption which the Consolidation authorities are not competent to decide the suit would not abate.

7. In the premises aforesaid, the Civil Revision is allowed and the impugned order is set aside. The learned Subordinate Judge is directed to proceed with the

suit and dispose of the same expeditiously. Parties to bear their own costs.
The records be sent back forthwith.