

(1983) 08 OHC CK 0020

In the Orissa High Court

Case No : Civil Revision No. 437 of 1981

Radhasyam Jena and Others

APPELLANT

Vs

Jagannath Jena and Another

RESPONDENT

Date of Decision : 30-08-1983

Acts Referred:

Hindu Succession Act, 1956 — Section 22, 22(2)

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

Citation : (1983) 56 CLT 459 : (1984) 1 OLR 54

Hon'ble Judges : G.B. Patnaik, J

Bench : Single Bench

Advocate : P. Kar, for the Appellant; B.H. Mohanty, for Opp. Party No. 1, for the Respondent

Final Decision : Dismissed

Judgement

G.B. Patnaik, J.—This revision is directed against the order of the Munsif, Kendrapara, dated 23rd July, 1981, in Misc. Case No. 408 of 1979 whereunder the learned Munsif has held that the pending proceeding before him does not abate 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 miscellaneous case arose out of an application u/s 22(2) of the Hindu Succession Act. The prayer of the petitioner in the said application was to direct the opposite party no. 1 to sell the suit land to him for a consideration to be determined by the court. The suit land originally belonged to one Netrananda who died in 1967 leaving behind his widow Madhavi and sons Jagannath, Hadibandhu and Gajendra. Madhavi died in the year 1971. Hadibandhu and Gajendra executed a sale deed conveying their share in the property to a stranger Radhesyam without offering the same to Jagannath who had a preferential right of purchase u/s 22 of the Hindu Succession Act. In the premises Jagannath had filed the application with the prayer that Radhesyam

should be directed to sell the suit land to him for a consideration to be determined by the court with the ancillary relief of an injunction against Radhesyam not to construct any house or not to change the nature of the land in question. The opposite parties in their objection averred that there was an amicable partition amongst the members of Netra-nanda's family in the year 1964 and the suit land fell to the share of Hadibandhu and Gajendra who were possessing the same till the date of execution of the sale deed in favour of Radhesyam. It was also further averred that Hadibandhu and Gajendra offered the land to Jagannath but since Jagannath did not agree to purchase the same, the land was sold to Radhesyam and, therefore, the application u/s 22 of the Hindu Succession Act would not be maintainable.

The opposite parties filed an application before the learned Munsif to the effect that the land in question has been brought under consolidation operation by issue of a notification u/s 3 of the Act and, therefore, the proceeding abates under sub section (4) of section 4 of the Act. After hearing the parties, the learned Munsif by the impugned order has held that the proceeding does not abate. The opposite parties 1 to 3 before the learned Munsif have preferred this revision against the aforesaid order.

3. Mr. Kar, the learned counsel for the petitioners, contends that the language of sub-section (4) of section 4 of the Act is wide enough to include a prayer u/s 22 of the Hindu Succession Act since eventually interest in land is going to be declared by the civil court and, therefore, the proceeding abates. To appreciate this contention, it is worthwhile to quote sub-section (4) of section 4 of the Act in extenso :--

"4. Effect of notification :

Upon the publication of the notification issued under subsection (1) of Section 3 in the official gazette, the consequences as hereinafter setforth, shall, subject to the provisions of this Act, ensue in the consolidation area till the publication of notification under section 41; or sub-section (1) of section 5. as the case may be-

(1).....

(2)

(2-a)

(3)

(4) every suit and proceedings for declaration of any right or interest in any land situate within the consolidation area in regard to which proceedings could be or ought to be started under this Act, which is pending before any Civil Court, whether of the first instance on 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 lands 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 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."

A fair interpretation of sub-section (4) would be that suits and proceedings pending before any court stand abated if such proceedings would be started under the Act. In other words, if the relief that has been sought for in the civil court can be made available to a party under any of the provisions of the Act then, the proceedings before the civil court would abate. If, however, the said relief is not available under the Act, then the proceedings will not abate. The relief which Jagannath has sought for in his application before the learned Munsif, namely the claim of preferential right to purchase the share of his co-sharers Hadibandhu and Gajendra, cannot be obtained in any proceedings under the Act. A perusal of the provisions of the Act makes it clear" that the authorities under the Act have no power to entertain an application u/s 22 of the Hindu Succession Act and decide whether a party has a preferential claim with respect to the share of his co-sharer nor can they direct any person to execute a sale deed in accordance with section 22 of Hindu Succession Act. Since such a proceeding is not entertainable under any of the provisions of the Act, sub-section (4) of section 4 of the Act will have no application. The conclusion of the learned Munsif is therefore, unassailable. I, therefore, do not find any merits in this revision which is accordingly dismissed. Parties are directed to bear their own costs in this Court.