

(2010) 03 OHC CK 0098
In the Orissa High Court
Case No : F.A.O. No. 263 of 2007

Sadasiba Palei and Others

APPELLANT

Vs

Sabitri Patra and Others

RESPONDENT

Date of Decision : 04-03-2010

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 40 Rule 1, Order 7 Rule 11
Orissa Consolidation of Holdings and Prevention of Fragmentation of Land Act, 1972 —
Section 4

Citation : AIR 2011 Ori 19 : (2010) 110 CLT 522

Hon'ble Judges : M.M. Das, J

Bench : Single Bench

Judgement

M.M. Das, J.—Heard Mr. A.P. Bose, Learned Counsel for the Appellants & Mr. SK Mishra, Learned Counsel appearing for Respondents.

2. Though this appeal has been filed against an Order Dated 1.5.2007 passed by the Learned Civil Judge (Senior Division), Puri in C.M.A. No. 215 of 2005 arising out of C.S. No. 193 of 2006 on an application filed under Order 40 Rule 1 Code of Civil Procedure. by the Plaintiffs for appointment of a receiver during course of hearing of the appeal, it came to light that the suit has been filed for partition of the suit property amongst the parties. Admittedly, the suit has been filed after the disputed property came under the consolidation operation pursuant to a notification issued u/s 4 of the Orissa Consolidation of Holdings & Prevention of Fragmentation of land Act, 1972 (in short "the Act"). The consolidation authorities have the power to effect partition under the above Act & Section 51 of the Act bars jurisdiction of the Civil Court, which envisages as follows:

51. Bar of jurisdiction of Civil Courts- Notwithstanding anything contained in any other law for the time being in force, but subject to the provisions contained in Clause (3) of Section 4 & Sub-section (1) of Section 7-

(1) all questions relating to right; title, interest & liability in land lying in the consolidation area, except those coming within the jurisdiction of Revenue Courts

or authorities under any local law for the time being in force, shall be decided under the provisions of this Act by the appropriate authority during the consolidation operations; &

(2) no Civil Court shall entertain any suit or proceedings in respect of any matter which an officer or authority empowered under this Act is competent to decide.

3. A plain reading of Sub-Section 2 of Section 51 of the Act clearly shows that no Civil Court can entertain any suit or proceedings in respect of any matter which an officer or authority empowered under the Act is competent to decide. Hence, the suit from its inception was not maintainable. However, from the Order Dated 14.2.2007 passed by the Learned Civil Judge (Senior Division), Puri, it appears that the Learned Court below being conscious of the position that the properties are under the consolidation operation instead of holding that the suit is not maintainable & rejecting the plaint under Order 7 Rule 11 Code of Civil Procedure. peculiarly, directed stay of further proceedings in the suit till disposal of the appeal filed under the Act.

4. Mr. S.K. Mishra, Learned Counsel appearing for the Respondents submits that from the written statements filed by the Appellants before the Court below, it would transpire that the status of the Plaintiffs to sue for their right as successors, was also questioned. According to Mr. Mishra, such question of succession basing on the status of the Plaintiffs is not adjudicable by the consolidation authorities.

5. It is naive to state that the authority who has the power & the jurisdiction to decide a particular issue cannot be said to be having no jurisdiction to decide the ancillary issue, which is necessary to be adjudicated for deciding the main issue. This Court in the case of Jairam Samantray Vs. Baikuntha Samantaray and Others, , while dealing with a similar question, has held that even the question of adoption can be decided by the consolidation authorities as an ancillary issue, while deciding the right, title & interest over the disputed property, but such decision will be subject to the final adjudication by the competent Civil Court, if the status is questioned subsequently before the Civil-Court.

6. In view of such position, when the suit was not maintainable from its inception, all questions raised after passing the order of stay by the Learned Trial Court which itself is found to be unsustainable, could not have been dealt with by the Trial Court. Therefore, all the orders passed in the suit are deemed to be invalid & inoperative. The suit is accordingly dismissed as not maintainable. It is made clear that this Court has expressed no opinion on the findings arrived at by the consolidation authorities either in the objection case or in the appeal, as it is submitted by Mr. Mishra, Learned Counsel appearing for the Respondents that the orders passed in the appeal are under a revision preferred by the Respondents. The Revisional Court is free to decide the matter in accordance with law.

The FAO is accordingly disposed of.

Urgent certified copy of this order be granted on proper application.