
(2023) 05 OHC CK 0057
In the Orissa High Court
Case No : Writ Appeal No.112 Of 2020

Sanjay Patra and others

APPELLANT

Vs

Bidyadhar Prusty And Others

RESPONDENT

Date of Decision : 03-05-2023

Acts Referred:

Citation : (2023) 05 OHC CK 0057

Hon'ble Judges : Dr. S. Muralidhar, CJ;G. Satapathy, J

Bench : Division Bench

Advocate : A. P. Bose

Final Decision : Disposed Of

Judgement

I. A. No.159 of 2020

1. None appears for the Respondent No.1 despite delivery of notice.
2. For the reason s stated therein, the application is allowed. The delay of 177 days in filing the appeal is condoned.

W.A. No.112 of 2020

3. None appears for Respondent No.1, who is the contesting Respondent, despite service of notice.
4. The present appeal is directed against an order dated 25th July, 2019 passed by the learned Single Judge in Review Petition No.81 of 2018 filed by the present Appellants seeking review of the judgment dated 3rd November, 2016 disposing of OJC No.2229 of 2000. That writ petition had been filed by Respondent No.1 challenging the order of the Commissioner, Consolidation, Cuttack dated 30th December, 1996 in Consolidation Revision Case No.659 of 1995 which was allowed by the said order in favour of the present Appellants.
5. It is pointed out that during the pendency of the aforementioned OJC case, Opposite Party No.8 in writ petition i.e. Smt. Durga Dei died on 19th June, 2013.

This fact was not brought to the notice of the learned Single Judge. Further, Opposite Party No.11 was shown as 'Rama Chandra Patra' when in fact it should have been 'Bijay Patra'. This too was not brought to the notice of the learned Single Judge. In view of the wrong names mentioned, the present Appellants did not receive any notice. Further, the writ petition was bad for non-joinder of necessary parties.

6. Despite all these facts being brought to the notice of the learned Single Judge in the review petition, he has rejected it stating that the original judgment was passed "with the materials available therein" and that if it is a question of the judgment applying to 'non-parties', "the same shall be decided in appropriate proceeding at appropriate stage."

7. With the judgment passed by the learned Single Judge in OJC No.2229 of 2000 on 3rd November, 2016 being adverse to the present Appellants, there was no other appropriate proceeding in which all these pleas could have been urged.

8. For the aforementioned reasons, this Court sets aside the order dated 25th July, 2019 passed by the learned Single Judge and allows the Review Petition No.81 of 2018 preferred before the said Court by the present Appellants. As a result, the order dated 3rd November, 2016 in OJC No.2229 of 2000 stands recalled. The said OJC No.2229 of 2000 stands restored to the file of the learned Single Judge. The said writ petition will now be listed in the roster Bench of the learned Single Judge on 7th August, 2023.

9. Learned Single Judge is requested to proceed with the matter only after notice to the writ Petitioner, who has chosen not to participate in the present proceedings despite service of notice.

10. The appeal is disposed of in the above terms.

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