(1984) 08 OHC CK 0033

In the Orissa High Court

Case No : Civil Rivision No. 422 of 1981

Sankar Prasad Dev Burman and Another APPELLANT

Vs

Indumati Sahoo RESPONDENT

Date of Decision : 06-08-1984

Acts Referred:
Income Tax Act, 1961 — Section 230A

Citation : (1985) 154 ITR 826

Hon'ble Judges : D.P. Mohapatra, J

Bench : Single Bench

Advocate : Devanand Misra, Deepak Misra and R.N. Naik, for the Appellant; A.K. Padhi, for the Respondent

Judgement

Mohapatra, J.—The order dated June 22, 1981, of the Subordinate Judge, Puri, in Misc. Case No. 303 of 1980, rejecting the petitioners'' application u/s 47, Civil Procedure Code, is under challenge in this revision petition.

2. The opposite party filed O.S. No. 28/1 of 1976, wherein she obtained a decree against the petitioners for specific performance of a contract. Under the decree, the petitioners were directed to obtain necessary permission of the Collector to convey the suit property to the opposite party within two months and to execute a registered sale deed in her favour within a period of two months from the date of obtaining such permission and receipt of balance consideration of money from her. The decree contained certain further directions to the decree-holder. Since they do not arise for consideration in this case, it is not necessary to state them in detail. The petitioners (judgment-debtors) having failed to execute the sale deed, the opposite party (decree-holder) filed Execution Case No. 93 of 1979, on October 27, 1979, to which the petitioners filed their objections on December 18, 1980, on which the impugned order was passed.

3. Though the objections raised by the petitioners to the executability of the decree were manifold, two of them have been pressed before me in the course of the argument. They are :

(a) that the collector''s permission could not be obtained due to certain defects in the lease renewal deed; and

(b) that as the valuation of the holding in dispute is more than Rs. 1,00,000, the sale deed cannot be executed without obtaining a clearance certificate as required u/s 230A of the Income Tax Act.

4. So far as the first objection is concerned, the court below in paragraph 6 of his order has observed that in letter No. 4368, dated August 13, 1979, unconditional permission was accorded to the petitioners for the transfer of the suit property. In view of this position, the learned counsel for the petitioners fairly concedes that this objection no longer arises for consideration.

5. The second objection raised by the petitioners is devoid of merit since Section 230A of the I.T. Act, 1961, which provides that no registering officer shall register a document which purports to transfer, assign, limit or extinguish the right, title or interest of any person to or in any property (other than agricultural land) valued at more than Rs. 50,000, unless the certificate prescribed therein has been obtained, is confined to cases of voluntary deeds executed by assessees. It has no application to involuntary acts resulting in transfer, assignment, limitation or extinguishment of rights in property by the force of law or under an order of the court or under a decree whether based on a compromise or otherwise, (vide C.S. Loganathan Vs. P.L. Kapur and Another, . In view of this settled position of law, objection of the petitioners is unsustainable.

6. Both the objections raised by the petitioners having failed, the revision petition is devoid of merit and the same is dismissed, but in the circumstances of the case without costs of this proceeding.

