

(1990) 11 OHC CK 0028

In the Orissa High Court

Case No : Civil Revision No. 635 of 1989

Santipriya Jena and Another

APPELLANT

Vs

Rebati Naik and Others

RESPONDENT

Date of Decision : 23-11-1990

Acts Referred:

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

Citation : (1991) 71 CLT 386 : (1991) 1 OLR 139

Hon'ble Judges : P.C. Misra, J

Bench : Single Bench

Advocate : Bidhayak Patnaik, B. Mohanty, B. Patnaik and A.K. Jena, for the Appellant; Mahadev Mishra and S.K. Mohanty, for the Respondent

Final Decision : Allowed

Judgement

P.C. Misra, J.—The plaintiffs in Title Suit No. 78 of 1986 of the Court of Munsif, jagatsinghpur are the petitioners in this revision challenging the legality of the order passed by the learned Munsif on 10-5-1989 holding that the said suit has abated u/s 4(4) of the Consolidation of Holdings and Prevention of Fragmentation of Land Act (hereinafter called the "Consolidation Act").

2. The simple question for consideration in this revision is that whether in the facts and circumstances of the case a suit for partition would abate as has been held in this case by the learned Munsif. The plaintiff prayed for partition claiming interest in the suit properties as daughters of one H''whikesh Jena. Their case is that the property in respect of which patition sought for, belonged to their father, and they being the only legal representatives, left behind after his death, they are entitled to succeed to their father's interest. It has been alleged in the plaint that the husband of defendant No. 1 obtained a registered deed on 19-1-1976 which Hrushikesh Jena executed with the bona fide belief that it is a deed of mortgage whereas the said document has now been found to be a deed of sale. The plaint allegations are that the said document was obtained by the husband

of: defendant No. 1 by exercising fraud and undue influence on Hrushikesh and the contents of the said document were never read over and explained to him nor did Hrushikesh understand the import and contents thereof. On the basis that the said document has not conveyed any title in favour of the transferee, the plaintiffs have prayed for partition of the said property claiming that they still have interest therein unaffected by the alleged sale deed dated 19-1-1976..The case of the defendants in the trial Court is that the sale deed was executed by Hrushikesh fully understanding the contents and import thereof and there was no fraud or undue influence exercised in the matter of execution of the said document. Thus, their case is that Hrushikesh having transferred the property during his life lime under valid deed of conveyance, the plaintiffs have no title and hence no locus standi to claim for partition.

3. The pleadings of the parties are clear and it is also conceded by the learn-d counsel for both parties that if the registered document dated 19-1-1976 is held to have conveyed title of Hrushikesh in favour of the transferee, the plaintiffs would have no subsisting interest in the property in question and the suit for partition at their instance would be incompetent. In other words, the plaintiffs" prayer for partition of the property is solely dependent upon the conclusion of the Court that the sale deed in question is void. Thus it has been argued that if a prayer for partition is made before the consolidation authorities, the same may not be available to the plaintiffs unless and until it is held that title did not pass under the document in question from the transferor to the transferee. Mr. Mishra appearing for the opp. parties has vehemently argued that there having been no prayer for setting aside the sale deed dated 19-1-1976, his suit for partition I should abate as the relief for partition is available to be granted by the Consolidation authorities. On verification of the plaint, Wind that no independent prayer for setting aside the document dated 19-1-1976 has been Whether, in the facts, and circumstances of this case, " nra setting aside the document in question was necessary to be made, is question, which may arise for consideration. But from what has already been stated, it is clear that the locus standi of the plaintiffs to claim for partition of the property is dependent upon the invalidity of the sale deed in question. Any adjudicating authority, before whom the prayer for partition, in such circumstances, is made, has to first decide as to whether the plaintiffs have subsisting title in spite of the sale deed dated 19-1-1976 executed by Hrushikesh. If such question can be decided by the Consolidation authority, the suit must abate. But in the event, the Consolidation authority will have no jurisdiction to decide the question, the prayer for partition under the Consolidation Act would be a fruitless exercise.

4. The pleadings of the plaintiffs are to the effect that the sale deed in question would not bind the plaintiffs as it was fraudulently obtained from Hrushikesh by misrepresentation without reading over the contents thereof. It has also been stated that the executant of the docu- ment,nameiy Sri Hrushikesh Jena was not aware of the import and contents of the document. The question, therefore, arises as to whether the document dated 19-1-1976 is necessary to be declared

void by the Court having jurisdiction. If such a declaration is necessary, the Consolidation authority would have no jurisdiction to give such declaration which the Civil Court alone can give. This Court has emphasised time and again that, for the purpose of determining the nature and character of a suit for the purpose of considering whether it would abate under Sec 4(4) of the Consolidation Act, it is always necessary to look to the substance of the pleadings and not merely the forms of the pleadings of the plaintiff alone or the prayer made by him, vide Sridhar Mohanty Vs. Kamal Kumar Agarwalla, .

5. In this case the learned Munsif has not examined any of the above questions. The impugned order, therefore, is bound to be set aside, which I hereby do.

6. What the learned Munsif is required now to do is to examine the pleadings of the parties and in order to appreciate the substance thereof and find out whether complete relief in the facts of the case would be available to the plaintiffs before the consolidation authorities. If the learned Munsif comes to the conclusion that a. specific prayer for setting aside the document in question is necessary to be made, he may call upon the plaintiffs to suitably amend the plaint and pay additional court-fee, if payable, and then decide as to whether the suit would be confined to such relief alone leaving " the prayer for partition to be adjudicated by the Consolidation authorities or the suit is maintainable as a whole, before the Civil Court.

7. I would, therefore, allow the Civil Revision, but there shall be no order as to costs. The further progress of the suit would be in accordance with the terms made above.