
(2017) 12 OHC CK 0040

In the Orissa High Court

Case No : 179 of 1993

Sarat Chandra Nayak and another

APPELLANT

Vs

Rama Chandra Nayak and others

RESPONDENT

Date of Decision : 20-12-2017

Acts Referred:

[Orissa Consolidation of Holdings and Prevention of Fragmentation of Land Act, 1972](#), [Section 9](#)

Citation : (2017) 12 OHC CK 0040

Hon'ble Judges : A.K.Rath

Bench : SINGLE BENCH

Advocate : Bibekananda Bhuyan, Manoj Kumar Behera, Ramakanta Mohanty, Kalyan Kumar Mohapatra

Judgement

1. The plaintiffs are the appellants against a reversing judgment in a suit for permanent injunction.

2. The case of the plaintiffs was that Pankaj and Kapila were two brothers. Pankaj had two sons, namely, Dwija and Kusuna. Dwija died in the year 1981 leaving behind his wife Labani-plaintiff no.1 and one daughter, namely, Srimati, defendant no.7. Kusuna died in the year 1980 leaving behind his three sons, namely, Ram Chandra, Chandramani and Indramani, defendants 1 to 3 and three daughters, namely, Malati, Ahalya and Charu, defendants 4 to 6. Subash is the son of Kapila. He possessed his separate share. Dwija and Kusuna were separated. There was severance of joint family property by metes and bounds. Dwija adopted Sarat, plaintiff no.2. There was a giving and taking ceremony in presence of the villagers and relations. After death of Dwija, plaintiff no.1 executed a deed of acknowledgement of adoption-cum-gift deed on 4.1.1982 in favour of plaintiff no.2. Plaintiffs 1 and 2 were in possession of the property of Dwija. Since the defendants threatened to dispossess them, they instituted the suit seeking the relief mentioned supra.

3. Defendants 1 to 3 resisted the claim of the plaintiffs mainly on the ground that

Kapila was issueless. Kapila adopted Dwija. Thus, Dwija had no right to inherit any property from the branch of Pankaj. After death of Pankaj, Kusuna inherited the property being the sole surviving heir. After death of Kusuna, the defendants succeeded to the property.

4. Stemming on the pleadings of the parties, the learned trial court framed five issues. Parties led evidence. The suit was decreed. The defendants 1 to 3 filed T.A.No.25 of 1986. The learned appellate court set aside the judgment and remitted the matter back for de novo hearing. After remand, the learned trial court again upheld the contention of the plaintiffs on the question of adoption and decreed the suit. The defendants 1 to 3 filed T.A.No.7 of 1992 before the learned Sub-Judge, Jagatsinghpur, which was allowed. It is apt to state here that during pendency of the Second Appeal, appellant no.1 died.

5. The Second Appeal was admitted on the following substantial questions of law: "1. Whether the lower appellate court was entitled to apply the theory of ancient adoption in coming to its conclusion on the question as to whether Dwija is the adopted son of Kapila or not."

2. Whether the decision of Consolidation Authority that Dwija is the adopted son of Kapila, shall operate as res judicata in the suit ?"

6. Heard Mr.Bibekananda Bhuyan, learned Advocate along with Mr.Manoj Kumar Behera, learned Advocate for the appellants and Mr.Ramakanta Mohanty, learned Senior Advocate along with Mr.Kalayan Kumar Mohapatra, learned Advocate for the respondents.

7. Mr.Bhuyan, learned Advocate for the appellants submitted that Dwija is the son of Pankaj. He is not the adopted son of Kapila. There is no pleading with regard to giving and taking ceremony. The finding of the learned appellate court that instant is a case of ancient adoption is perverse since one D.W.1 deposed that he was a witness when the adoption took place. In view of the same, the court cannot proceed with assumption that the evidence regarding actual giving and taking is lost. The learned appellate court erred in law in holding inter alia that the finding of the Consolidation Authority regarding adoption will operate as res judicata inasmuch as the finding was rendered when the civil suit was pending where adoption was the main issue. The finding of the Consolidation Authority shall not operate as res judicata. The learned appellate court brushed aside the documentary evidence on record as well as admission of the defendants. Non-consideration of the same vitiates the judgment.

8. Per contra, Mr.Mohanty, learned Senior Advocate for the respondents submitted that issue of adoption has been set at rest by the Consolidation Authority. The matter in issue was directly and substantially before the Consolidation Authority. If the issue of title is dependent upon adoption, the said issue can be decided by the Consolidation Authority ancillary and incidentally. The issue of adoption has been decided by the Consolidation Authority. The same cannot be reopened in the present suit. He relied on a decision of this Court in

the case of *Jairam Samantray Vrs. Baikuntha Samantray*, 70 (1990) C.L.T. 439.

9. The area, where the suit schedule land falls, came under the purview of the consolidation operation. Thirteen Objections Cases were filed under Section 9 of the Orissa Consolidation of Holdings and Prevention of Fragmentation of Land Act, 1972 by the respective parties to record the land in their favour. The same having been dismissed, the matter was carried in Appeal Case No.32 of 1985 before the Deputy Director, Consolidation Authority. In a well discussed order dated 17.10.1985, the Deputy Director, Consolidation Authority held that Dwija is the adopted son of Kapila.

10. In *Jairam Samantray (supra)*, a Division Bench of this Court went in-depth into the matter. The Court posed the question "Don't the consolidation authorities decide such question of legal character in cases after cases day in and day out ?" The Court held that "If then the consolidation authorities have jurisdiction to decide the question as to whether a person is son by birth, by what logic or law are they denied jurisdiction to decide if a person is son by way of adoption. Sonship is acquired either by birth or by way of adoption. They are the different modes of acquisition. If title to property as son by birth can be adjudicated upon by the consolidation authorities, we fail to understand why adjudication of claim to title as son by way of adoption should be out of bounds to them". It was further held that "the statement of law that the consolidation authorities have no jurisdiction to decide the question of adoption, that being a question of status, is not correct. In almost every case, consolidation authorities are deciding the question of status but a declaration of the law to the effect that the consolidation authorities have no jurisdiction to decide the question of adoption, if such question arises ancillary or incidentally for adjudication of right, title and interest in property, is insupportable."

11. The ratio in the case of *Jairam Samantray (supra)* applies with full force to the facts of this case. The matter in issue was directly and substantially issue before the Consolidation Authority. Thus, the decision of the Consolidation Authority that Dwija is the adopted son of Kapila shall operate as *res judicata*. The substantial questions of law are answered accordingly.

12. A priori, the appeal fails and is dismissed. Consequently, the suit is dismissed. No costs.