

(2005) 10 OHC CK 0016

In the Orissa High Court

Case No : Writ Petition (C) No's. 2548, 2549, 2550 and 2551 of 2002

Sarat Chandra Nayak

APPELLANT

Vs

Commissioner, Consolidation and Others

RESPONDENT

Date of Decision : 24-10-2005

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Orissa Consolidation of Holdings and Prevention of Fragmentation of Land Act, 1972 —
Section 36, 4, 51, 7(1), 9

Specific Relief Act, 1963 — Section 34

Citation : (2005) 100 CLT 616

Hon'ble Judges : P.K. Tripathy, J

Bench : Single Bench

Advocate : Prafulla Kumar Mallik, D.K. Sahoo and Ashok Mukherji, for the Appellant; B.H. Mohanty, D.P. Mohanty, R.K. Nayak, J.K. Bastia and T.K. Mohanty for Opp. Party No. 4, Additional Government Advocate for Opp. Party Nos. 1 to 3, B.K. Dagara, N.P. Patra, S.R. Mohapatra and J.D. Barik for Opp. Party Nos. 5, 6 and 7, for the Respondent

Final Decision : Allowed

Judgement

P.K. Tripathy, J.—The aforesaid Writ Petitions have been filed challenging to the confirming judgment of the revisional court passed by the Commissioner of Consolidation, Cuttack in Revision Case Nos. 1443 to 1447 of 1995.

2. Before dealing with the respective plea of the parties, it is appropriate to note the genealogy which has been taken note by the Deputy Director, Consolidation, Jagatsinghpur in Consolidation Appeal Nos. 85 to 89 of 1993 so also by the Commissioner of Consolidation in the above noted revision cases.

(Late) Baishnab |-----| (Late) Sankar Kapila |-----|
|-----| (Late) Gouranga Govinda (Late) Dhuleswar (Late) Kulmani W-
Ulluchha W - Parbati W- Sabitri died 11.3.1993 | | | |-----|-----| |-----|
|-----| Kailash Binod Premananda Subash Sukanta Namit Sanjukta | |-----|

3. The Writ Petitioner claims to be the adopted son of Kulamani, Sabitri " Saba, widow of Kulamani and her two daughters Namita and Sanjukta disputed to the aforesaid claim of the petitioner and that gave rise to various applications u/s 9 of the Orissa Consolidation of Holdings and Prevention of Fragmentation of Land Act 1972 (in short "the Act"). The property involved are from L. R. Khata Nos. 98, 144, 145, 243 & 954. Petitioner file Objection Case Nos. 3718, 3742, 3743, 3744 and 3746 all of 1990 claiming the landed properties of the aforesaid L. R. holdings to be the ancestral properties in the hands of Kulamani and he is to succeed as the adopted son of late Kulamani. In that respect he contended that alienation in the shape of registered gift deeds executed in favour of Namita and Sanjukta are void and not binding on him in the absence of his consent prior to or at the time of execution of the gift deeds in the months of August and September 1990.

Nibas Kumar Nayak, son of the Writ Petitioner filed Objection Case No. 3741 of 1990 to record L. R. Plot Nos. 3767 and 3712 in his favour on the basis of Registered Sale Deed No. 1804 dated 13.9.1989 executed by late Kulamani Nayak.

Namita filed objection Case Nos. 2531, 2532, 2533 and 2534 all of 1990 claiming right, title and interest over the disputed L. R. holdings in exclusion to the Writ Petitioner on the ground of the Registered Deed of Gift No. 1703 dated 20.8.1990 executed in her favour by her father late Kulamani and also on the basis of law of succession to the estate of late Kulamani.

Similarly Sanjukta filed objection Case Nos. 2525 & 2526, both of 1990, by making similar claim like Namita on the basis of Registered Deed of Gift No. 1794 dated 15.9.1990 executed in her favour by her father late Kulamani and the law of succession.

Saba " Sabitri Nayak, widow of Kulamani filed Objection Case No. 3450 of 1990 with the claim for recording the lands of disputed L. R. holdings in the name of her daughters Namita and Sanjukta in exclusion to the Writ Petitioner.

4. Though no specific order was passed, but with the participation of the parties one set of evidence for all the aforesaid proceedings was recorded in Objection Case No. 3742 of 1990 and all the aforesaid objection cases were disposed of by a common judgment delivered on 16.11.1992 by the Consolidation Officer, Raghunathpur. It is mentioned in the judgment of the Consolidation Officer that petitioner adduced oral and documentary evidence in support of his claim of adoption, status as the adopted son and possession of some of the case lands but no evidence whatsoever was adduced by the widow and the daughters of late Kulamani in support of their claim or against the claim advanced by the petitioner. Accordingly, he accepted the evidence adduced by the petitioner and disposed of the objection cases with the order for recording name of the petitioner with respect to the disputed properties.

5. Namita preferred the above noted five Consolidation Appeals describing the petitioner as the contesting respondent and her mother and the legal heirs of the deceased sister Sanjukta as proforma respondents. All the appeals were heard analogously and disposed of on 29.4.1995 in a common judgment. The appellate Court took into consideration various aspects relating to cancellation of the adoption deed, non-substitution of the petitioner as one of the legal representatives of Kulamani in a previously instituted suit by a co-sharer etc. and with due reference to such facts and submissions, which were beyond the evidence on record, he assessed the evidence of the petitioner, both oral and documentary (adduced before the Consolidation Officer) and rejected the same in support of the claim of adoption by the petitioner and consequentially allowed the appeal by allowing the claim of the other objectors rejecting the claim of the petitioner and his son. Petitioner then challenged the said judgment of the Deputy Director of Consolidation in Consolidation Revision Nos. 1443 to 1447, all of 1995. Learned Commissioner, Consolidation also heard the revision cases analogously and disposed of the same by the impugned common judgment delivered on 27/28.10.1999. Learned Commissioner adopted the finding of the appellate Court on accepting the Xerox copy of the documentary evidence filed before him by the contesting opposite party and dismissed all the revisions.

6. Petitioner filed O.J.C. No. 447 of 2000 challenging to the aforesaid judgment of the appellate and revisional courts but to avoid technical objection, later on he filed W.P.(C) Nos. 2549 to 2551 all of 2002. Parties to the proceeding participated in analogous hearing and submitted common notes of argument, therefore, this judgment shall abide the result in all the above noted Writ Petitions.

7. Written note of submission and citations have been referred to by the parties in support of their respective claims. While the petitioner seeks for setting aside the orders of the appellate and revisional courts and to accept his position as the adopted son for granting the consequential relief, alternatively he contended that the findings and the conclusion recorded by the appellate and the revisional courts is based on documents produced by the Opp. Party members. Acceptance of such documents without providing opportunity of testing the correctness of the same along with opportunity for providing rebuttal evidence has resulted in miscarriage of justice against the petitioner and also rendering the findings of the appellate and the revisional courts illegal. Accordingly, petitioner also prayed for remand of the cases. The Opp. Party members while arguing that in exercise of Writ Jurisdiction this Court is not to re-assess and evaluate facts and evidence and accepting the factual findings of the courts below is only to see if there has been any illegality resulting in failure of justice also argued at the stage of inquiry by the Consolidation Officer, opportunity of adducing evidence was denied to them on the ground of delay, and therefore, the prayer for remand of the petitioner is inconsistent and contradictory with that attitude.

8. Being the settled position of law, in course of argument, it was not disputed at the Bar that in exercise of supervisory jurisdiction underclauses 226 or 227 or both,

this Court is not to behave as a Court of Appeal and only in cases of jurisdictional error committed by the Courts below or illegality or perversity committed in course of appreciating the fact and provision of law, this Court may invoke the Writ Jurisdiction. That settled principle therefore operates against fresh assessment of evidence to record finding of fact by this Court.

9. In the above context, if the facts and circumstances already indicated are looked into, then there does not appear any doubt that the appellate and the revisional court committed illegality by accepting documentary evidence from the Opp. Party members and recording their finding with reference to such documents besides the evidence of the petitioner which was available on record: If the appellate and the revisional authority would not have referred to the documents and affidavit failed by the Opp. Parties and they would have simply referred to the evidence of the petitioner, both oral and documentary, to come to any conclusion, then that could not have been treated as illegal if not suffering from perversity. As noted above, the appellate and the revisional authority committed illegality in accepting and appreciating extraneous materials without admitting such documents as evidence on record after providing opportunity to the petitioner to challenge their credibility so also providing opportunity of adducing rebuttal evidence. Above all, Xerox copies of the registered deeds were accepted on their face value. Therefore, this Court reiterates the finding that order of the appellate and the revisional Court is absolutely illegal and not sustainable in the eye of law.

10. Section 51 of the Act bars jurisdiction of Civil Courts and reads as hereunder:

"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 and Sub-section 1 of Section 7 :

(1) all questions relating to right, title, interest and 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; and

(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."

11. It transpires from the above quoted provision that the Consolidation Authorities have been vested with the authority and jurisdiction to determine all questions relating to right, title, interest and liability in land in the consolidation area except those matters which come within the jurisdiction of Revenue Courts or authorities under any local law for the time being in force. All questions relating to right, title, interest and liability in land does not cover the cases of determination of the status of a person in any manner whatsoever. Therefore, as in the present case, issue on adoption of the petitioner if comes before the Civil Court, then such a suit is not to abate u/s 4 of the Act, unless that suit is for

other relief which comes within the fold of the mischief of Section 4. In latter type of cases determining the question relating to right, title, interest and liability in land, status of a person may come as an ancillary issue and therefore to determine such right, title, interest and liability in land, the Consolidation Authorities are not precluded from deciding the question of status only with a view to determine the question relating to right title, interest and liability in land. In that respect a Division Bench of this Court in the case of Jairam Samantray Vs. Baikuntha Samantaray and Others, has propounded that :

"Having regard to the objects and the purpose of the enactment and the unambiguous words of wide amplitude, it is not open to constrict the field of operation by any pre-conceived notions. Questions relating to right, title, interest and liability in any land are to be decided by the consolidation authorities except those which can be decided only by the Civil Court and are, therefore, out of bounds to them. In deciding questions of right, title and interest and liability in land, questions and issues relatable thereto arise for decision. The decisions on the question of right, title and interest and liability depend and hinge on the decision on the connected questions, the questions which have to be decided ancillary and incidentally. Sometimes, in order to secure the relief, the suitor has to clear hurdles and impediments standing on the way. Those hurdles may be judgment or order of the Court or a document. So long as the hurdle stands on the way, grant of relief is not possible and permissible. It has to be removed. The Civil Court alone has jurisdiction to set aside judgment or order or a document of transfer. A distinction has been drawn between documents of transfer which are void and those which are voidable. Void documents or transactions being ab initio void, they are not est and therefore, can be ignored. They being non-existent are not really hurdles on the way. But documents, transactions, judgments of orders, which are not void ab initio are to be avoided. Until avoided they bind the parties and are impediments. The jurisdiction to set aside such documents, transactions, judgments or decrees which are voidable and need avoidance, vests in the Civil Court but not in the consolidation authorities. The questions which do not necessitate interpositions of the Civil Court for the removal of the obstacle and can be ancillary and incidentally decided and on the resolution of which would depend the decision as to right, title, interest and liability in land, are within the jurisdiction of the consolidation authorities. Seeking a declaration simpliciter as to legal character as contemplated by Section 34 of the Specific relief Act is exclusively within the jurisdiction of the Civil Court and not within the competence of the consolidation authorities. Except in cases where title is claimed on the basis of transactions inter vivos, in most cases title is claimed on the basis of relationship, say as son, father, mother, husband or wife etc. Each of such question of relationship is a question pertaining to legal character or status. Don't the consolidation authorities decide such question of legal character in cases after cases day in and day out? 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. We are, therefore, of the view 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."

12. When the consolidation authorities have been vested with such jurisdiction to decide such questions involving civil rights, there should be due application of mind regarding the procedure in relation to acceptance and appreciation of evidence in accordance with law in Indian Evidence Act, such a responsible job cannot be discharged on the basis of whims or by adopting a procedure alien to law and principle of natural justice.

13. It be noted here that citations made at the Bar in the cases of Priyanath Mohanty v. Indumati Bewa AIR 1971 Ori 211; Jagabandhu Senapati and Others Vs. Bhagu Senapati and Others, ; Puni Bewa and Ors. v. Bijaya Kumar Mohapatra and Ors. 63 (1987) CLT 686; Doctor Nahak v. Bhika Nahak and Anr. 77 (1994) CLT 523 and Raghunath Behera v. Balaram Behera and Anr. 80 (1995) CLT 837 are relating to the manner of proving a valid adoption and the method of appreciating the evidence in that respect. Said citations are of no assistance at present in view of the preceding finding on the illegality of the judgments of the appellate and revisional courts.

14. As already indicated, petitioner's claim on the case land is based on the plea of adoption and if the plea of adoption is accepted, then validity or voidability of the gift deeds executed by late Kulamani in favour of her daughters would come for consideration. Claim of the Opp. Parties are in denying to the plea of adoption. Apart from that, the Opp. Party members claim right over the properties covered under the registered gift deed executed by Kulamani so also on the basis of law of succession. Learned Counsel for the Opp. Parties rightly contended that the rules of pleading as in the CPC are not applicable to the consolidation proceeding. Therefore; all questions relating to right, title, interest and liability in land amongst the parties or any person affected thereby has to be considered systematically and lawfully. The consolidation authorities while discharging such function cannot be in haste though they are to expedite early disposal of cases by avoiding or rejecting prayer for undue adjournments and by undertaking enquiry on day to day basis. It is appropriate that the Commissioner of Consolidation while exercising the jurisdiction u/s 36 of the Act may either himself accept the evidence from the Opp. Parties providing opportunity to the petitioner to meet the same both by challenging the documents if tendered in

evidence by the opposite party and adducing rebuttal evidence, if any, from his side. It is also left open to the Commissioner of Consolidation Officer, as he would deem just and proper and to decide the revision cases thereafter in accordance with law.

15. For the reasons indicated above, the impugned common judgment passed by the Commissioner Consolidation in Revision Case Nos. 1443, 1444, 1445, 1446 & 1447, all of 1995, is set aside and all the revision cases are remanded for fresh disposal in the manner indicated in this judgment.

The Writ Petitions are accordingly allowed. No cost.

Registry is directed to ensure dispatch of the L.C.R. of revision cases, appeal cases and objection cases to the concerned authorities within a week.