
(1984) 10 OHC CK 0010

In the Orissa High Court

Case No : Civil Revision No. 166 of 1983

Sarat Chandra Patra and Another

APPELLANT

Vs

Saraswata Bidyapitha and Others

RESPONDENT

Date of Decision : 29-10-1984

Acts Referred:

Orissa Consolidation of Holdings and Prevention of Fragmentation of Land Act, 1972 —
Section 4, 51

Citation : (1985) 1 OLR 98

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

Bench : Single Bench

Advocate : J. Patnaik, for the Appellant; R.K. Mohapatra, for the Respondent

Final Decision : Dismissed

Judgement

D.P. Mohapatra, J.—The order of the Munsif, Puri, dated 3.12.1982 in Original Suit No. 141/81-1 rejecting, the petitioners application that the suit should be held to abate u/s 4(4) of the Orissa Consolidation of Holdings and Prevention of Fragmentation of Land Act, 1972 ("the Act" for short).

Saraswata Bidyapitha, Virtung, through its President, Durga Charan Mohanty (opposite parties Nos. 1 and 2) and the said Durga Charan Mohanty in his personal capacity filed the aforesaid suit claiming the following reliefs:

- a) Permanently resrtain the defendant from interfering in the plaintiffs" possession over the suit property and causing any waste or damage to the suit properties by any means whatsoever.
- b) Award cost of the suit against the defendants.
- c) Grant such other reliefs as the Court might deem fit proper.

The petitioners were arrayed as defendants Nos. 1 and 2 and opposite parties Nos. 3 and 4 as defendants Nos. 3 and 4 respectively in the said suit. The disputed properties were described in schedules "A" and "A/1" in the plaint as

District" Puri P. S. Gope, Mouza Virtung, Sabak Khata No. 173, hal plot No. 94 corresponding to a part of plot No. 774 of the previous settlement with an area of Ac. 0.04 decimals and hal plot No. 942 corresponding to a part of plot No. 774 of - previous settlement with an area of 10 decimals respectively.

2. The gist of the plaintiffs" case as narrated in the plaint was that Sri Ram Chandra Mohanty (opposite party No. 3), Sharat Chandra Mohanty (opposite party No. 4) and one Sarbeswar Ray were the joint owners of plot No. 774 of the previous settlement of which the suit lands are portions. Sarbeswar Ray had 6 annas interest in the plot while opposite parties Nos. 3 and 4 has 10 annas interest therein. Sarbeswar, who was in separate possession of 12 and 1/3rd decimals on the western side of the plot, sold the said area to opposite party No. 1 by a registered sale deed dated 31. 12. 1969. The plaintiff No. 1 amalgamated the said area with its adjoining lands and has been in possession thereof since of date of purchase. Subsequently, defendants Nos. 3 and 4 sold the rest of the plot No. 774 to plaintiff No. 2 by a registered sale deed dated 30th January, 1981. The purchase was for the benefit of plaintiff No. 1. Thus the plaintiff acquired right, title and interest in respect of the entire plot. It is further stated in the plaint that during the recent consolidation operation though the disputed plot was non-consolidable in nature being homestead land, records were prepared for it. The portions of the suit plot which had been in possession of defendants Nos. 3 and 4, opposite parties Nos.3 and 4 after the sale of by Sarbeswar were sold under different plots Nos. 942 and 944 with an area of 10 decimals and 4 decimals respectively. The said 2 plots were recorded in the name of said defendants since they had not executed the sale deed in favour of plaintiff No. 2-opposite party No. 2 by them. The defendants Nos. 1 and 2 (petitioners), who were inimically disposed of towards the plaintiff threatened to encroach upon the suit property on the strength of a fabricated deed of sale of suit A, schedule property in their favour purported to have been executed by defendants Nos. 3 and 4. According to the plaintiffs and the said deed of sale did not convey any interest to the defendants Nos. 1 and 2. In paragraph 9 of the plaint the plaintiff averred that the defendants Nos. 1 and 2 have not derived any title to the suit property by or under the sale deed spoken to above. Their desire to interfere with the plaintiffs" possession is unsupported by law and fact and thus a declaration is necessary to prevent continuous scuffle in the locality over the suit property. The permanent injunction is needed as an urgent measure to protect plaintiffs" right to and enjoyment of the property.

On these allegations the plaintiffs sought for a declaration of their title over the suit properties and confirmation of their possession thereof and permanent injunction. But subsequently, by an order, dated 15.3.1983 the plaint was amended to delete the prayer for declaration of title and confirmation of possession leaving the reliefs quoted above.

The defendant Nos. 1 and 2 (petitioners in this proceeding) filed an application No. 10. 8. 1982 stating inter alia that the suit plot No. 774 stands recorded in

the R. O. R, of 1927 as "Sarada". The consolidation operation is now going on in the suit village which is included in the notification issues under the Act. As such, the suit is liable to abate under Sections 4 and 51 of the Act. They prayed that the Court should pass an order holding that the suit abates. The plaintiffs filed their objection to this petition mainly on the ground that the suit property is "homestead" and as it does not come within the ambit of Section 4 and Section 51 of the Act. According to them the suit does not abate under the said provision.

4. The trial Court on a consideration of the matter rejected the application filed by the defendants Nos. 1 and 2 on two grounds:

(1) that the suit property being homestead is not consolidable and as such, Sections 4 and 51 of the Act have no application to it and

(2) that the reliefs sought in the suit being for permanent injunction it does not come within the purview of Sections 4 and 51 of the Act.

It is fairly conceded by the learned counsel appearing for the opposite parties that in view of the decision of Division Bench of this Court in the case of 54 (1982) C. L. T. : Jadumani Biswal v. Narayan Chandra Biswal (dead), the ground stated in the impugned order that the suit land being homestead does not come within the ambit of Sections 4 and 51 of the Act is not sustainable. But this does not solve the entire problem in the case. As already noticed earlier the reliefs sought in the suit is for permanent injunction. In paragraph 9 of the plaint, the plaintiffs have categorically stated the urgent necessity of getting the relief of permanent injunction. From the records of the case it appears that an application for interim injunction was also filed and numbered as Misc. Case No. 130 of 1082. As such, it cannot be said that the relief of permanent injunction is unnecessary or redundant in the suit. The Division Bench in this Court in the case of Rahas Bewa Vs. Kanduri Charan Sutar and Others, that a suit for permanent injunction does not abate under Sections 4 and 51 of the Act since there is no provision in the Act for grant of relief of permanent injunction. This position has been accepted recently by a Full Bench of this Court in the case of 1984 (I) O. L. R., 887 : Duruju Maillik v. Krupasindhu Swain. In view of this well-settled position of law it has to be held that the trial Court rightly rejected the contention of the petitioners that the suit abates, under Sections 4 and 51 of the Act.

5. In the result, the revision petition fails and the same is dismissed but in the circumstances of the case without costs.