

(2019) 02 OHC CK 0035
In the Orissa High Court
Case No : OJC No.6412 Of 2000

Saudi Pradhan & Others

APPELLANT

Vs

Joint Commissioner, Settlement And Consolidation,
Berhampur & Others

RESPONDENT

Date of Decision : 08-02-2019

Acts Referred:

Constitution Of India, 1950 — Article 226, 227
Orissa Consolidation Of Holdings And Prevention Of Fragmentation Of Land Act, 1972
— Section 37(1)
Benami Transactions (Prohibition) Act, 1988 — Section 4, 4(1), 4(2)

Citation : (2019) 02 OHC CK 0035

Hon'ble Judges : S. K. Mishra, J

Bench : Single Bench

Advocate : A.K. Patra, N Patra, B.N Shadangi, R. Sarangi, J.N. Rath, S.K. Jethy, M.K.Panda, P.S. Samantara, S.B. Mohanty, M.K. Singhdeo, S.K. Pattjoshi, K.K. Mohapatra.

Final Decision : Disposed Of

Judgement

S.K. Mishra, J

1. In this writ petition, the petitioners have challenged the order dated 26.02.2000 passed by the learned Joint Commissioner, Settlement and Consolidation, Berhampur in Revision Case No.368 of 1998 directing joint recording of the land in question in favour of opposite party nos.3 to 6 in respect to L.R. Khata No.911 pertaining to L.R. Plot No.1505/3049 and 1505 measuring an area of Ac.0.050 decs. and Ac.1.685 decs. of land situated in village Baunsalundi in rayati status.
2. The common ancestor of opposite party nos.3 to 6 is Arjuna Gouda. He had married one Mohadei Gouda. Mohan Gouda- opposite party no.4 is

their son and Surendra Gouda-opposite party no.3 and Rabi Gouda-opposite party no.5 are the sons of Mohan Gouda-opposite party no.4. After death

of Mohadei Gouda, Arjuna Gouda married Sulava Gouda- opposite party no.6 and at the time of marriage, she got gold ornaments and house hold

articles from her father as gift.

On 07.04.1959, the opposite party no.6 purchased total area of Ac.1.84 dec. of land pertaining to Sabik Patta No.8, Survey No.198/IB which

measuring area Ac.1.06 cents and Survey No.199 area Ac.0.78 cents out of Ac.1.41 cents in village Baunsalundi for a consideration amount of

Rs.2,000/- by a registered deed of sale No.1283 from Gangadhar Pradhan and Birupakhya Pradhan. It is alleged by the petitioners that the said land

has been purchased by the opposite party no.6 out of the sale proceeds of gold ornaments that were gifted by her father. On 10.04.1996, the opposite

party no.6 in order to liquidate her debts and to maintain herself, sold total area of Ac.0.94 cents pertaining to Hal Plot No.1505 area Ac.0.915 dec.

out of Ac.1.685 dec. and Hal Plot No.1505/3049 area Ac.0.25 dec. out of Ac.0.50 dec. in favour of the petitioner late Kashinath Pradhan for a

consideration amount of Rs.54,000/- by a registered deed of sale. Then, consolidation operation was started in the concerned village and land register

was prepared and published in the name of the opposite party no.6 showing the land particulars. On 22.06.1998, the opposite party nos.3 to 5 and

others interfered with the possession of the petitioner late Kashinath Pradhan in respect of the property purchased from the opposite party no.6 for

which he filed a suit for permanent injunction in the court of learned Civil Judge (Junior Division), Bhanjanagar bearing T.S. No.13 of 1998. In the said

suit, the opposite party nos.3 to 5 filed their written statement and counter claim on 14.07.1998.

On 08.09.1999, the petitioner filed an objection before the ACO, Bhanjanagar to record the land in question as per the sale deed dated 10.04.1996

which was registered as Objection Case No.166 of 1999 and after issuing notice to the opposite party no.6, the ACO, Bhanjanagar allowed his claim

vide order dated 08.09.1999 taking into consideration the Amin's report. The opposite party nos.3 to 5 never filed any objection before the ACO,

Bhanjanagar, but they filed an application under Section 37 (1) of the Orissa Consolidation of Holdings and Prevention of Fragmentation of Land Act,

1972 (hereinafter referred to as "the OCH & PFL Act" for brevity) and it was registered as Revision Case No.368 of 1998, wherein they

prayed that the land in question may be recorded in their names purchased by late Arjun Gouda out of Stridhan property of Mahadei Gouda.

3. The opposite party no.1-Joint Commissioner Settlement and Consolidation, Berhampur without issuing notice to the deceased petitioner directed

joint recording of the land of the late petitioner in the names of the opposite party nos.3 to 6. Learned Joint Commissioner Settlement and

Consolidation, Berhampur held that he has jurisdiction to decide whether the transaction in RSD No.1283 of 1959 is benami or not and also it has been

held that the RSD No.1283 of 1959 executed by Gangadhar Pradhan and Birupakhya Pradhan in favour of the opposite party no.6 is a benami

transaction.

4. This Court could take note of the important aspects of the case.

Firstly, though it has been stated by Sulava Gouda, opposite party no.1 before the revisional court that she has sold a portion of land to the deceased

petitioner, no notice was issued to him though by then he was alive. The 2nd aspect of the case is that the learned Commissioner has come to the

conclusion that sale deed executed in favour of the opposite party no. 6 is in fact a benami transaction. The revision application can be disposed of on

any of the aforesaid grounds. However, in order to avoid further litigation and re-consideration by the Commissioner, this Court is of the opinion that

the finding recorded by the learned Commissioner that the land purchased by the husband of Sulava Gouda, which is benami transaction in the name

of opposite party no.6 is illegal on the face of the record. It is not disputed that by the time the revision application was filed, the Benami Transactions

(Prohibition) Act, 1988 has already come into force. Section 4 of the aforesaid Act provides for prohibition of the right to recover property held

benami. It reads as follows:

4. Prohibition of the right to recovery property held benami.-(1) No suit, claim or action to enforce any right in respect of any property held benami against the

person in whose name the property is held or against any other person shall lie by or on behalf of a person claiming to be the real owner of such property.

(2) No defence based on any right in respect of any property held benami,

whether against the person in whose name the property is held or against any other

person, shall be allowed in any suit, claim or action by or on behalf of a person claiming to be the real owner of such property.

(3) Nothing in this section shall apply,-

(a) where the person in whose name the property is held is a coparcener in a Hindu undivided family and the property is held for the benefit of the coparceners in the

family; or

(b) where the person in whose name the property is held is a trustee or other person standing in a fiduciary capacity, and the property is held for the benefit of another person for whom he is a trustee or towards whom he stands in such capacity.â??

5. Thus, no suit, claim or action to enforce right in respect of property held benami against the petitioner in whose name the property is held shall lie

by on behalf of any person claiming to be the owner of such property. In this connection, this Court takes note of the reported case of R. Rajagopal

Reddy (dead) by L.Rs. and others, vs. Padmini Chandrasekharan (dead) by L.Rs., AIR 1996 SC 238, wherein the Honâ??ble Supreme Court has

held that the prohibition under Section 4(1) of the Benami Transactions (Prohibition) Act, 1988 cannot be applied to a suit, claim or action to enforce

right in property held benami against person in whose name such property is held or any other person, if such proceeding is initiated by on behalf of

person claiming to be real owner thereof, prior to coming into force of Section 4(1) of the Act. In fact, the judgment rendered by the Honâ??ble

Supreme Court in the aforesaid case is a larger bench one consisting of three Honâ??ble Judges and thereby the Honâ??ble Supreme Court has

overruled the principles annunciated by it in the case of Mithilesh Kumari vs. Prem Behari Khare, AIR 1989 SC 1247 (wherein the Honâ??ble

Supreme Court held that the prohibition is also applicable to pending suits and appeals). However, in this case, the revision application has been filed

claiming benami transaction after the Benami Transactions (Prohibition) Act, 1988 came into force on 05.09.1988.

6. In the case of Duvuru Mohana Reddy vs. Alluru Nagi Reddy, AIR 1994 SC 1647, the Honâ??ble Supreme Court has further held that the

defence raised by the contesting respondent that the transaction of the sale under the sale deed dated 09.10.1957 executed in favour of the appellant

was a benami transaction is prohibited in view of Section 4(2) of the Benami Transactions (Prohibition) Act, 1988.

7. Though the benami transaction has been prohibited and there is a prohibition to claim a right or defend an action on the plea of benami transaction,

there are two exceptions to the same. First one where the person in whose name the property is held is a coparcener in a Hindu undivided family and

the property is held for the benefit of the coparceners in the family; or secondly where the person in whose name the property is held is a trustee or a

person standing in fiduciary capacity. The 2nd proviso is not attracted in this case. Even the 1st proviso of Section 4 of the aforesaid Act will not be

applicable in view of the fact that, before passing of the Hindu Succession (Amendment) Act 2005 amending the Hindu Succession Act, 1956, women

were not coparceners in a Hindu undivided family. So, this exception is also not applicable to the present case.

8. In that view of the matter, the order dated 26.02.2000 passed by the learned Joint Commissioner, Settlement and Consolidation, Berhampur in

Revision Case No.368/1998, as far as it relates to recording of land in favour of opposite party nos. 3 to 6 is vulnerable. The aforesaid order passed by

the learned Joint Commissioner, Settlement and Consolidation, Berhampur is set aside in part. The petitioners shall approach the learned Additional

Sub-Collector-cum-Consolidation Officer, Berhampur by filing appropriate application to carve out the land purchased by their predecessor and

prepare separate consolidation record of rights in their favour. The learned Additional Sub-Collector-cum-Consolidation Officer shall expedite the

matter.

9. This order be communicated at the cost of the petitioners.

Requisites be filed within thirty working days.

10. The OJC is disposed of.

..â?|â?|â?|â?|â?|â?|â?|..