

(2018) 03 OHC CK 0084
In the Orissa High Court
Case No : O.J.C.No.8884 of 1995

Sk.Mujibar Rahaman

APPELLANT

Vs

Sk.Kamruddin since dead his legal heirs Sk.Alluddin and
Others

RESPONDENT

Date of Decision : 20-03-2018

Acts Referred:

Constitution of India, 1950 — Article 227

Citation : (2018) 03 OHC CK 0084

Hon'ble Judges : BISWANATH RATH

Bench : Single Bench

Advocate : P.Kar, M.Mohanty, A.K.Mohanty,?? P.K.Ba, D.K.Swain, S.D.Das,
M.M.Swain, S.Biswal,?? H.K.Behera, H.Mohanty,?? J.S.Samal, K.Sattar

Final Decision : Dismissed

Judgement

Biswanath Rath,J.

1. Filing the writ petition, the petitioner has challenged the orders at Annexures-1, 2 and 3 passed by the authorities created under the Orissa

Consolidation of Holdings and Prevention of Fragmentation of Land Act, 1972 .

2. Short background involved in the case is that petitioner filed objection case for recording Hal Plot No.1159, area measuring Ac.0.60 decimals in his

name. Objection being allowed, one Sk.Kamruddin preferred an appeal. The appellate authority being satisfied with the grounds raised by

Sk.Kamruddin, while allowing the appeal Case No.1 of 1990 remanded the matter for fresh adjudication by the original authority with specific

observation to find out as to whether Ramjan was not allotted with any share in the suit property in lieu of allotment of his share in other properties or

Ramjan had no share? The petitioner led his case as his mother had purchased

Ac.0.36 decimals of land from one Ekram Alli during the year 1973.

Subsequently, she also purchased Ac.0.20 decimals of land from one Anand Chandra Mohanty, who got the land through a registered sale deed from

Ekram Alli. Ekram Alli transferred the said land as he was in exclusive possession as per the partition deed made in the year 1960. It is also claimed

that the mother of the objector after acquiring the suit land fully, gifted the same in favour of her son, namely, Sk. Mujibur Rahaman, the objector

necessitating, the objector made a request to the competent authority to record the suit land in his favour. The opposite party in his objection put

forward that the suit land was initially leased out in favour of Sk.Usaman, Sk. Kamuruddin, the opposite party, Sk.Manan and Sk.Ekram by

Harekrushna Mahatab, ExZamindar and accordingly the major settlement record has been prepared. The opposite party therein thereby claimed that

he has 1/3rd share. Getting into the pleadings the original authority framed as many as 5 issues. Petitioner led evidence by producing 3 witnesses

whereas the opposite party therein declined to give any witness. The original authority considering the materials available on record and giving its

findings in respect of the issues framed therein, ultimately disposed the objection case at the instance of the petitioner after observing that Kamuruddin

is entitled to 1/3rd share, the objector is entitled to 2/3rd share from the suit plot with further observation that the other opposite parties since did not

contest the claim of the objector amounts to conceding the claim of the objector as appearing at Annexure-1.Challenging the partly allowing the

objection case, the objector i.e. the present petitioner preferred Appeal Case No.130 of 1991. The Deputy Director, Consolidation, Bhadrak upon

hearing the parties involved, dismissed the appeal thereby confirming the order of the original authority. A revision case was initiated vide

Consolidation Revision Case No.925 of 1993. The Additional Commissioner, Settlement & Consolidation, Bhubaneswar again hearing the parties

including the petitioner declined to interfere in the orders of the authorities below and thereby rejected the revision.

3. Assailing the impugned order, learned counsel for the petitioner submitted that the claim of the objector on the basis of the gift has been failed to be

understood and appreciated by all the forums. Learned counsel also submitted that the finding of the authorities below that the contesting opposite

party has right over the property as a co-sharer of the property remains contrary to the materials available on record. It is on these two counts,

learned counsel for the petitioner prayed this Court for interfering in the impugned order and setting aside of the same.

4. Sri Das, learned senior counsel appearing for the opposite party taking this Court to the discussions made by all the forums contended that not only

the original authority has taken all the materials available on record and passed the order only after giving his considered view but the order of the

original authority has also been confirmed by the appellate authority as well as Revisional authority. Taking the plea that there is concurrent finding of

fact by all the forums, Sri Das, learned senior counsel appearing for the contesting opposite party submitted that for the application under Article 227

of the Constitution of India, this Court finds absolutely no scope for interfering in such matters. Sri Das thus requested this Court for rejecting the writ

petition. Counsels for other opposite parties followed the submissions made by Sri Das.

5. Considering the rival contentions of the parties and taking into consideration the claims made by the objector as well as the contesting opposite party

before the original authority, this Court finds the original authority in right appreciation of the matter has framed the following issues:

1) Whether there was apportion by metes and bounds among the Co-sharers during the year 1950.

2) Whether Ramjan was not made a party to the Regd.Partition of 1960 because of having his share allotted in other properties.

3) Whether the partition of 1960 was limited to the properties under the share of Akbar and Sadat as per the oral parturition of 1950 because of the

dispute over their respective schedules.

4) Whether Akbar, Ramjan, Sadat and Samsar got any Hatpatta from Harekrushna Mahatab, Ex- Zamindar.

5) Whether Sk.Kamuruddin has any share in the suit land.â?Reading of the issues, this Court finds the original authority giving a proper appreciation to

the facts available involving the case has not only rightly framed the issues but in a well discussed order has also decided all the issues with clear

finding that the petitioner i.e. the objector could be able to substantiate his case only in respect of 1/3rd share of the disputed property. Original

authority taking into account the claim of the objector, the petitioner not only found that objector not only failed to produce the copy of the Hata patta, but he even has gone to the extent saying that he has not even seen the patta. Coming to consider the claim on the basis of T.L. the trial Court observed that the T.L. stands on different person's name and the statement of the objector did not tally with the T.L. Original authority taking into consideration the claim on the basis of oral partition came to hold that there is no such document. Witnesses produced even went to the extent of saying that they have not seen any such partition and there is absence of any such document. The findings as well as the observations of the original authority have been confirmed by both the appellate authority and the Revisional authority. Perusal of the appellate order, this Court also finds the appellate authority has also dismissed the appeal after taking into consideration of the grounds raised therein. Revisional authority also appears to have been given necessary thought over the matter. For the observations and the findings of the original authority and the forums of both the appellate authority as well as the revisional authority, this Court finds no scope for interfering in the impugned orders in exercise of power under Article 227 of the Constitution of India.

Â 6. In the result, the writ petition fails. Interim order dated 12.2.1996 passed by this Court in Misc. Case No.8170 of 1995 and extended from time to time stands vacated. However, there is no order as to cost.