
(2010) 01 OHC CK 0010
In the Orissa High Court

Smt. Aparna Dhir Singh

APPELLANT

Vs

Debendra Nath Jenamani and Others

RESPONDENT

Date of Decision : 13-01-2010

Acts Referred:

Succession Act, 1925 — Section 213

Citation : (2010) 2 CivCC 769 : (2010) 1 OLR 508

Hon'ble Judges : M.M. Das, J

Bench : Single Bench

Judgement

M.M. Das, J.—Heard

2. The appellant as plaintiff has filed the suit for declaration of right, title, interest and confirmation of possession along with a relief to set aside the sale deeds executed by her mother and sister in favour of the opp. Parties-defendants, who were the purchasers. An interim application under Order 39, Rules 1 and 2 C.P.C. was filed by the plaintiff for injuncting the purchasers from coming over the suit land. The said application having been rejected, the present appeal has been preferred.

3. It is the admitted case of the plaintiff that the plaintiff claims exclusive title over the disputed property basing on a Will executed by her deceased father. It is a well known principle of law and also Section 213 of the Indian Hindu Succession Act prescribes that unless the Will is probated, no title accrues favour of the legatee. In the instant case, the claim of the plaintiff is on the basis of a Will as stated above, but the said Will is pending to be probated in a Probate Misc. Case.

4. Dr. A.K. Rath in support of the above principle of law relied upon the decisions in the case of Kanhialal Sarda and Another Vs. State of Orissa and Others, and Mrs. Hem Nolini Judah (since deceased) and after her Legal Representative Mr. Marlean Wilkinson Vs. Isolyne Sarojbashini Bose and Others, . In the case of Kanhialal Sarda (supra), a Division bench of this Court interpreting Section 213

of the Indian Succession Act and relying upon the case of Hem Nolini Judah (supra) held that Section 213 of the Indian Succession Act lays down a peremptory rule of law and the appellant who was the legatee in the said case cannot obtain the aid of the Court to establish his right as the executor under the alleged Will so long as he is not able to produce the probate of the Will before the Court. The Court further held that want of a probate may not affect his right as executor under the Will, but if he seeks the aid of any Court of law to establish any of the rights of an executor under the Will, the Court will not come to his aid till he produces the probate of the Will. In the case of Hem Nolini Judah (supra), the Supreme Court has categorically laid down that Section 213 of the Indian Succession Act clearly creates a bar to the establishment of any right under the Will by an executor or a legatee unless the probate or letters of administration of the Will have been obtained. The Supreme Court has further held that it is a settled principle of law that it is immaterial whether the right under the Will is claimed as a plaintiff or as a defendant; in either case, Section 213 will be a bar to any right being claimed by a person under a Will whether as a plaintiff or as a defendant unless probate or letters of administration of the Will have been obtained.

5. In view of such position, unless the Will is probated, the plaintiffs claim cannot be sustained. However, considering the fact that the property has been sold in favour of the respondents by the mother and sister of the plaintiff, which is admittedly an ancestral property, it is necessary that the nature and character of the property should not be changed during the pendency of the suit.

6. In view of the above, it is directed that the opp. Parties shall maintain status quo, as on today, over the disputed property till disposal of the suit. The impugned order is modified to the above extent. Since the suit is of the year 2008, the trial Court is directed to dispose of the suit expeditiously, preferably within a period of six months from today. As it is stated at the Bar that the pleadings are complete, parties are directed to cooperate in the trial.

7. The appeal is accordingly disposed of.

Urgent certified copy of this order be granted as per rules.