

(2009) 04 OHC CK 0020
In the Orissa High Court
Case No : W.A. No. 52 of 2009

Smt. Baisakhi Mahanta

APPELLANT

Vs

Himansu Sekhar Dwibedi and Others

RESPONDENT

Date of Decision : 02-04-2009

Acts Referred:

Orissa Survey and Settlement Act, 1958 — Section 32

Citation : (2009) CLT 1 Supp

Hon'ble Judges : B.S. Chauhan, C.J;B.N. Mahapatra, J

Bench : Division Bench

Advocate : S.B. Mohant, for the Appellant;

Final Decision : Dismissed

Judgement

B.S. Chauhan, C.J.—This writ appeal has been filed against the judgment and order of the learned Single Judge dated 17.03.2009 dismissing the Writ Petition No. 2997 of 2009. Civil Suit No. 69 of 2005 is pending consideration before the Civil Judge (Senior Division), Keonjhar wherein the order passed by the Tahasildar in Mutation Case No. 1038 of 2007 was tried to be introduced in evidence. The Trial Court vide order dated 12.2.2009 came to the conclusion that said document could not be taken on record at a belated stage as it would create prejudice to the Respondents-Defendants and rejected the application for taking the additional evidence on record. The application has been rejected on the ground that the Plaintiff was fully aware about the order passed by the Tahasildar in Mutation Case, however, document was not filed in time. The learned Single Judge, while deciding the Writ Petition against the said order, held that in case any order passed in mutation case during pendency of the suit, its evidentiary value may not be credible. More so, the mutation case neither extinguishes nor confers any right, title or interest in the property, and such orders are not binding upon the Civil Court while trying the suit. Hence this Appeal.

2. Learned Counsel the Appellant advanced the same arguments which had been canvassed before the Courts below.

3. In *Thakur Nirman Singh and Ors. v. Thakur Lal Rudra Pratap Narain Singh* AIR 1926 PC 100, the Privy Council placed reliance on the judgment in *Corea v. Appu Hamy* 1912 App. Cas. 230 and observed as under:

(Mutation proceedings) are much more in the nature of fiscal inquiries instituted in the interests of the State for the purpose of ascertaining which of the several claimants for the occupation of certain denominations of immovable property may be put into occupation of it with the greater confidence that the revenue for it will be paid. It is little less than a travesty of judicial proceedings to regard the (mutation) orders as judicial determinations expelling *proprio vigore* individual from any proprietary right or interest he claims in immovable property.

4. In *Smt. Sawarni Vs. Smt. Inder Kaur and Others*, the Hon''ble Apex Court held as under:

Mutation of a property in the revenue record does not create or extinguish title, nor has it any presumptive value of title. It only enables the person, in whose favour the mutation is entered, to pay the land revenue in question.

5. Similar view has been reiterated by the Hon''ble Supreme Court in *Balwant Singh and another etc. Vs. Daulat Singh (dead) by L.Rs. and others, ; R.V.E. Venkatachala Gounder Vs. Arulmigu Viswesaraswami and V.P. Temple and Another, ; and Suman Verma v. Union of India and Ors.* (2004) 12 SCC 57.

Thus, it is evident that mutation entry does not confer right or title to property.

6. Undoubtedly the documents obtained/received or procured post litem may also not be of high evidentiary value. The document may be admissible but without any evidentiary value, (vide *Union of India and others Vs. Kantilal Hematram Pandya, ; R.S. Mehrotra Vs. Central Govt. Industrial Tribunal and Another, ; Nagar Mahapalika, Bareilly v. Labour Court, Bareilly and Anr.* 1995 (71) F.L.R. 950; and *Maharashtra State Electricity Board v. Sakharam Sitaram Shinde* 1996 (72) FLR 562).

7. The instant case is required to be examined in the light of the aforesaid settled legal propositions.

The Appellant/Plaintiff filed a suit on 8.10.2005 for declaration of title in the suit property and for recovery of possession. The trial Court while deciding the said application vide order dated 12.02.2009 categorically held that earlier one Mangulu had filed a suit against the present Appellant/Plaintiff and had obtained the possession of the land through the Court and the judgment of the civil court was confirmed by the High Court in appeal. Mutation Case No. 1038 of 2007 was registered much later. More so, against the order in mutation case, Appeal No. 9 of 2008 is pending before the Sub-Collector. In view of the fact that Mangulu is not a party in the suit, order in mutation case may not be relevant. The order in mutation case was available to the Appellant/Plaintiff at an early stage when evidence was adduced before the Court. No satisfactory explanation could be furnished as to why it could not be filed at the relevant time. More so, mutation

proceedings/orders may not have any bearing on the right, title or interest of the parties. The said findings have been confirmed by the learned Single Judge in the judgment and order impugned before us. The Civil Court as well as learned Single Judge have observed that as a document (mutation case order) has been obtained during the pendency of the suit, it may not have any bearing on the subject matter of the suit. There is a complete fallacy in this observation for the reason that it is not a document procured by a party from some institution or authority. It is a judgment of the quasi-judicial authority. Therefore, said observation is unwarranted and uncalled for and cannot be sustained in the eye of law.

8. The judgment of the Court/quasi-judicial authority has a relevance and cannot be treated merely as a document as it is admissible under the Evidence Act. However his alone would not tilt the balance in favour of the Appellant/Plaintiff for various reasons inter-alia, the said judgment in mutation case has not yet attained finality and it is being considered in appeal. The order of the appellate authority would be subject to revision u/s 32 of the Orissa Survey and Settlement Act. More so, it has been given considering the earlier judgment and order of the civil court which stood confirmed by the High Court, wherein one Mangulu had obtained a decree against the Appellant/Plaintiff and said Mangulu is not a party in the suit. Thus the said order may not have any relevance whatsoever. Appellant/Plaintiff ought to have obtained and filed the order much earlier before the civil court when the evidence was led. Explanation given by her that Sub-Collector could not make the copy available is not worth acceptance for the reason that the Appellant/Plaintiff had procured it at a subsequent stage under the Right to Information Act and even if the Sub-Collector was creating some hindrances, the Appellant/Plaintiff could have procured it under the Right to Information Act. It is not the case of the Appellant-Plaintiff that she had ever applied for the certified copy of the said order. Thus, we fail to understand as how could she procure the copy of the said order. Thus, Appellant is admittedly guilty of negligence.

9. In such a fact situation, we do not see any cogent reason to interfere with the matter. Appeal lacks merit and is accordingly dismissed.

B.N. Mahapatra, J.

10. I agree.