

(2000) 07 OHC CK 0019

In the Orissa High Court

Case No : Original Jurisdiction Case No. 5549 of 1997

Smt. Bijaya Chatterjee

APPELLANT

Vs

Commissioner, Land Records and Settlement and Others

RESPONDENT

Date of Decision : 24-07-2000

Acts Referred:

Citation : (2000) 2 OLR 349

Hon'ble Judges : P.K. Misra, J

Bench : Single Bench

Advocate : H.M. Dhal, B.P. Ray, P.K. Patnaik and R.K. Mohanty, for the Appellant; A.R. Dash, N. Lenka, S. Latif, N. Das (O.Ps. 4 to 9) and Y. Mohanty, P.C. Biswal, B.N. Mohanty and S.K. Beura (O.Ps. 10 and 11), for the Respondent

Judgement

P.K. Misra, J.—The order passed by the Commissioner of Land Records and Settlement, Orissa, and the consequential order passed by the Tahsildar are being challenged in the present writ application. The present petitioner claims to be the heir of late Hiranbala Chatterjee, as she claims to be the daughter of the brother of late Hiranbala Chatterjee, who is stated to have died issueless. During preparation of Settlement Record-of-Rights, the disputed land was recorded in the name of Bijaya Chatterjee (petitioner), daughter of Rajatkanta Chakraverty. Present opposite parties 4 to 9 had filed revision before the Commissioner of Land Records and Settlement, Orissa. Under Annexure-9, the revision was allowed and the matter was remanded to the Tahsildar. Thereafter, the Tahsildar as per his order, annexed as Annexure-15, has deleted the name of the petitioner and recorded the names of opposite parties 4 to 9.

2. The learned counsel appearing for the petitioner has submitted that opposite parties 4 to 9 had claimed on the basis of sale deed from Hiranbala. The predecessor-in-interest of present opposite parties 4 to 9 had purportedly purchased the disputed property from Hiranbala, the admitted owner. However, subsequently, in Title Suit No. 58 of 1968 that sale deed was found to be invalid and title and possession of Hiranbala had been confirmed. It is, therefore,

submitted that in view of such decree of the Civil Court, the present opposite parties 4 to 9 could not have claimed any right.

The learned counsel appearing for the contesting opposite parties, on the other hand, submitted that the present petitioner is no way related to Hiranbala and as such has got no locus standi to challenge the order passed by the Commissioner or the consequential order of the Tahsildar. The counsel for the contesting opposite parties also claimed that the opposite parties were in possession of the land.

3. It appears that the revision was disposed of ex parte by the Commissioner. Though there is some dispute as to whether notice had been served or not, it is unnecessary to consider that aspect. The revision was remanded to the Tahsildar for final decision. It has been held in the decisions reported in 82 (1996) CLT 321 (Sarart Chandra Sahu v. Commissioner of Land Records and Settlement, Orissa, Cuttack and Ors.) and 1998 OLR 495 (Harihar Mohapatra and Ors. v. Commissioner of Land Records and Settlement, Orissa and Ors.) that the Commissioner while deciding a revision under the Orissa Survey and Settlement Act cannot remand the matter to the Tahsildar for final decision. However, in the subsequent decision it has been clarified that though such remand is not contemplated, the Commissioner can call for a report from the Tahsildar. It appears that in the present case, the Commissioner has remanded the matter to the Tahsildar for fresh disposal and the Tahsildar without making any further inquiry has recorded the land in the names of present contesting opposite parties, merely on the basis of the observations made by the Commissioner. Since the procedure adopted by the Commissioner is contrary to the ratio of the two Division Bench decisions of this Court referred to above, which are otherwise binding on me and since the matter was disposed of ex parte by the Commissioner, I deem it just and proper in the interest of justice to quash the order passed by the Commissioner and the consequential order passed by the Tahsildar, and remand the matter to the Commissioner for fresh disposal. Both parties are directed to appear before the Commissioner on 21st August, 2000, who shall thereafter dispose of the matter as expeditiously as possible, preferably within a period of four months from the date of receipt of this order. It is made clear that no opinion has been expressed regarding the rival contentions made by the parties. This order shall be communicated to the Commissioner.

4. The writ application is accordingly disposed of. There will be no order as to costs.