

(2001) 03 OHC CK 0005

In the Orissa High Court

Case No : Original Jurisdiction Case No. 14111 of 1998

Smt. Manjubala Pattanayak

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 26-03-2001

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 9 Rule 13
Constitution of India, 1950 — Article 226, 227
Orissa Survey and Settlement Act, 1958 — Section 16, 43
Orissa Survey and Settlement Rules, 1962 — Rule 34

Citation : (2001) 1 OLR 530

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

Bench : Single Bench

Advocate : K.K. Mishra and S. Mohanty, for the Appellant; P. Mukherjee and J. Rath, O.P. No. 5, for the Respondent

Judgement

P.K. Misra, J.—The petitioner has prayed for quashing the orders under Annexures 1, 2 and 3 and for a direction to the opp. parties to mutate the name of the petitioner.

2. One acre of land pertaining to Plot No. 516 in Khata No. 492 was settled with one Champakballari Das in Lease Case No. 548 of 1979. The aforesaid Champakballari Das applied for permission u/s 6-A(I) of the Orissa Land Reforms Act (in short, the "O.L.R. Act") for alienation of the property and subsequently after obtaining the permission sold the disputed property to the petitioner by registered sale deed dated 23.2.1982. Thereafter, the petitioner filed an application before the Addl. Tahsildar for mutating the land in her favour. The said application was rejected on the ground that the order of lease had been set aside by the Addl. District Magistrate, Bhubaneswar, in Revision Case No. 45 of 1981. Thereafter, the petitioner filed Title Suit No. 177 of 1982 before the Subordinate Judge, Bhubaneswar, impleading the State Government as well as the other revenue authorities as defendants which was decreed ex parte by the trial Court on 26.6.1995 declaring the right, title and interest of the petitioner-

plaintiff and directing the present opp. party No. 4 to mutate the land in favour of the petitioner and to correct the record-of-rights. Accordingly, the petitioner filed a fresh application for mutation which was numbered as Misc. Case No. 6574 of 1995. The Addl. Tahsildar sought for a clarification from the Addl. District Magistrate, Bhubaneswar, as to whether mutation can be allowed on the basis of an ex parte decree of the Civil Court and ultimately rejected the application on the ground that in view of the provisions contained in Section 7-B of the Orissa Government Land Settlement Act (in short, the "O.G.L.S. Act"), the order of the Civil Court was without jurisdiction and no mutation can be allowed on the basis of such decision. The appeal and the revision filed by the petitioner having proved unsuccessful, the present writ application has been filed.

3. In the counter affidavit filed on behalf of the opp. parties, similar stand has been reiterated.

4. After having heard the learned counsel appearing for the petitioner and for the State and on perusal of the impugned orders and various provisions of law, there cannot be any doubt that the orders passed by the opposite parties refusing to mutate the disputed land in favour of the petitioner cannot be sustained. Section 16 of the Orissa Survey and Settlement Act, 1958, provides :

"16. Maintenance of records -

In order to keep the map and record-of-rights up-to-date same shall be maintained in accordance with such rules as may be prescribed in that behalf."

Sec. 43 of the Act empowers the Government to make rules for the purpose of carrying out the provisions of the Act. There is no dispute that the Orissa Survey and Settlement Rules, 1962 has been framed. Chapter IV of the Rules deals with the question of maintenance of record- of-rights and map. Rule 34 lays down the grounds on which correction of the record-of-rights is to be made.

"34. Grounds on which correction of the record-of-rights and map is to be made -

The Tahsildar may on application in that behalf of any person interested or on receipt of the a report from any of his subordinate officers or on receipt of a notice from the Registrar or Sub-Registrar appointed under the Indian Registration Act, 1908. or from a Court or on his own motion, order any change or any entry in the record-of-rights according to the entry in the record-of-rights according to the rules, hereinafter prescribed on any one or more of the following grounds, namely :

(a) (b) that by a decree in a civil suit, any entry therein has been declared to be erroneous;

(c) that being founded on a decree or order of a Civil Court or on the order of any competent authority, the entry therein is not in accordance with such decree or order;

(d)(e)(f)

A bare perusal of the aforesaid provisions makes it clear that the record- of- rights is to be corrected by the Tahsildar in accordance with the decree of the Civil Court or order of any competent authority. In such view of the matter, there cannot be any doubt that mutation has to be effected on the basis of decision by a Civil Court. The decision, even if, ex pane does not lose its binding force, particularly when, the present opposite parties had been impleaded as parties in the suit. It is not the case of the opposite parties that the ex parte decree has been subsequently set aside either by invoking the jurisdiction under Order 9, Rule 13, CPC, or by filing appeal or in any other manner. The duty of the revenue authorities is to act in accordance with the decision of the Civil Court. The cancellation of the lease by the revenue authorities was also one of the questions raised before the Civil Court and it had been decided in favour of the plaintiff. Even assuming that such decision was a wrong decision, instead of availing the remedy available under law, the opposite parties could not have arrogated themselves the authority to scrutinize the decision of the Civil Court. By mutation, the right of a party is not finally decided, but it is the duty of the revenue authorities to act in accordance with the provisions contained in Rule 34 of the Orissa Survey and Settlement Rules, 1962, which provides, inter alia, that mutation can be effected on the basis of the decision of the Civil Court.

5. For the aforesaid reasons, the orders passed under Annexures- 1, 2 and 3 cannot be sustained. The opposite party No. 4. the Additional Tahsildar, Bhubaneswar, is directed to re-dispose of the matter in accordance with law and if the decision of the Civil Court has not been set aside in appropriate forum, on the basis of such decision mutation should be effected. The writ application is disposed of with the aforesaid observation. There will be no order as to costs. ;