

(2024) 03 OHC CK 0212
In the Orissa High Court
Case No : R.S.A. No.191 Of 2017

Smt. Tulasi Bewa

APPELLANT

Vs

Sri Bhagabat Patra & Others

RESPONDENT

Date of Decision : 22-03-2024

Acts Referred:

Code of Civil Procedure, 1908 — Section 96, 100

Orissa Consolidation of Holdings and Prevention of Fragmentation of Land Act, 1972 —
Section 51

Citation : (2024) 03 OHC CK 0212

Hon'ble Judges : D.Dash, J

Bench : Single Bench

Advocate : Samir Kumar Mishra, J. Pradhan, P.S. Mohanty, S. Rout

Final Decision : Dismissed

Judgement

D.Dash, J

1. The Appellant, by filing this Appeal under Section 100 of the Code of Civil Procedure, 1908 (for short, 'the Code'), has assailed the judgment & decree dated 18th February, 2017 & 27th February, 2017 respectively passed by the learned District Judge, Baleswar, in R.F.A. No.79 of 2016.

The present Appellant, as the Plaintiff, had filed the suit, i.e., Civil Suit No.65 of 2002-I in the Court of the learned Civil Judge, Junior Division, Baleswar for declaration of her right, title and interest and confirmation of possession over the suit land and permanent injunction against the Respondents arraigned therein as the Defendants. The suit, having been dismissed, the present Appellant had carried the Appeal under section 96 of the Code, which too has been dismissed. Hence, the present Second Appeal is at the instance of the Appellant (Plaintiff), who has remained unsuccessful before the Trial court as well as the First Appellate Court.

2. For the sake of convenience, in order to avoid confusion and bring in clarity,

the parties hereinafter have been referred to, as they have been arraigned in the Suit.

3. Plaintiff's Case:-

The suit land is the ancestral property of the husband of the Plaintiff, namely, Pabi @ Padmolochan Jena. After the death of her Padmolochan, the Plaintiff came to possess the land. Taking advantage of her illiteracy, some outsiders, succeeding in their attempt to grab her property, had taken the same by way of gift and sale creating some gift deeds and the registered sale deeds purported to have been executed by her. The Plaintiff, therefore, had filed C.S. No.113 of 1972 with the prayer to set aside those sale deeds and for partition. The suit had been filed in the Court of the learned Civil Judge, Senior Division, Balesore. The land, which is the subject matter of the present suit, was there in the earlier suit described in Schedule-Cha. The Defendant No.1, in the present suit, was the Defendant No.10 in the earlier suit.

That suit stood preliminarily decreed in favour of the Plaintiff, which was made final on 27.09.1985. The Plaintiff, therefore, levied Execution Proceeding No.19 of 1986. In that proceeding, the possession of the land, which is the subject matter of the present suit, was delivered in favour of the Plaintiff on 20.08.1986 and she remained in possession of the same all along. The Defendants, having no manner of right, title, interest and possession over the said land, threatened her to take possession of the suit land asserting that the suit land has been recorded in their name. The Plaintiff, in enquiry, came to know that the Defendants with the help of the Consolidation Authority, had managed to record their names under Khata Nos.224 & 226. The Plaintiff, therefore, filed the suit.

4. The Defendant No.1, in filing the written statement, has stated to have purchased the suit land measuring Ac.1.15 decimals by registered sale deed dated 30.04.1963. He states that the said sale deed was not set aside in the earlier suit nor the property involved in the said sale deed was included in the partition. The Defendant No.1 and claim to be in possession of the suit property from the time of purchase and, therefore, the Consolidation Authority, has rightly recorded their names finally in the record of right after accepting the objection of the Defendants and arriving at a satisfaction that they have the right, title, interest and possession of the suit land.

5. On the above rival pleadings, the Trial Court framed six issues. Proceeding to decide the core issue relating to the claim of the Plaintiff of having right, title, interest and possession over the suit land, which stood contested by the Defendants, who claimed the same unto themselves, the Trial Court, upon examination of the evidence and their evaluation, in the backdrop of the rival pleadings; further taking into consideration, the findings and final decree passed in the earlier suit, i.e., C.S. No.113 of 1972 as well as the settled position of law relating to the jurisdiction and power vested in the Consolidation Authorities in recording the land covered under the consolidation operation by deciding the

right, title and interest and competing claims of the parties, rendered the decision against the Plaintiff. That has practically led the Trial Court to dismiss the suit.

The unsuccessful Plaintiff, having carried the Appeal, the First Appellate Court sat over to decide the point relating to the right, title and interest of the Plaintiff over the suit land as claimed by her and the right to possess. Upon independent examination of the evidence at its level and their evaluation, the First Appellate Court has concurred with the finding of the Trial Court and accordingly, has confirmed the decision of the dismissal of the suit.

6. Mr.Samir Kumar Mishra, learned Senior Counsel for the Appellant (Plaintiff) submitted that the earlier suit, i.e., C.S. No.113 of 1972 had been filed by the Plaintiff challenging several sale deeds and gift deeds illegally obtained from the Plaintiff without her knowledge and consent when she had never consciously executed those. In that suit, the Trial Court had rendered the decision that those sale deeds and gift deeds are void and inoperative and accordingly preliminarily decree for partition had been passed and in that view of the matter, even though in the consolidation operation, the suit land has been recorded in the name of the Defendants, in the record of right finally published, that ought not to have been honoured in this suit since the Consolidation Authority could not have conferred the right, title and possession upon the Defendants on the face of the earlier. He submitted that for that reason, the consolidation record of right ought to have been held to be non-est in the eye of law. He further submitted that regard being had to the finding rendered in the previous suit as regards the invalidity of the sale deeds, which certainly included the present sale deed dated 30.06.1963, the Trial Court as well as the First Appellate Court ought to have decreed the suit of the Plaintiff. He, therefore, urged for admission of this Appeal to answer the above as the substantial question of law.

7. Keeping in view the submissions made, I have carefully read the judgments passed by both the Courts below as also the judgment passed in C.S. No.113 of 1972.

8. In the earlier suit, the present Defendant No.1 was Defendant No.10. The subject matter of the present suit was described in Schedule-Cha of the plaint in that suit. The said suit stood decreed in part. In the written statement, which the present Defendant No.1 had filed in that suit, as the Defendant No.10, he had specifically mentioned about his purchase of the suit land and had advanced his claim of right, title and interest over the same by virtue of purchase by registered sale deed dated 30.04.1963. The Trial Court, in that suit, declared the gift deeds admitted in evidence and marked Ext.C & D in the said suit as void and illegal and not binding on the Plaintiff. Similarly, the sale deeds admitted in evidence and marked Exts.B to B/4, B/5, B/10 & F were declared as void, illegal and not binding on the Plaintiff. Verification of the judgment and final decree, as has been made by the Trial Court as well as the First Appellate Court, has revealed that the sale deed, which concerns with the subject matter of the

present suit, had not been admitted in evidence and marked exhibit in the said suit and in that suit, this registered sale deed dated 30.04.1963 had not been declared void and illegal and not binding on the Plaintiff. That was not the order. The Plaintiff is not disputing this position on record and these facts are not controverted. Therefore, it has to be held that the registered sale deed dated 30.04.1963, which relates to the present suit land, has stood the test in that suit. Merely because of sweeping observations the sale deeds executed by the Plaintiffs are not valid when specifically the Trial Court, in that suit, while declaring those sale deeds to be void and illegal, has not so declared in respect of this sale deed. The Plaintiff has not carried the matter further. Therefore, it is too late in the day for the Plaintiff to say that this sale deed dated 30.04.1963, which has been admitted in evidence and marked Ext.C in the present suit is also void and illegal and inoperative and not binding on the Plaintiff as being so ruled in the earlier suit.

9. That being the position, during the consolidation operation, the Consolidation Authority, having honoured the said sale deed, when has gone to record the suit land in favour of the Defendants in overruling the contention raised by the Plaintiff, no fault can be found with the same. Moreover, when it stands admitted that the final order passed therein has also not further been challenged by the Plaintiff in the forum prescribed under the Orissa Consolidation of Holdings and Prevention of Fragmentation of Land Act, 1972. Therefore, in my considered view the Trial Court as well as the First Appellate Court have rightly held the suit to be not maintainable in view of the bar contained in section 51 of the OCH & PFL Act, 1972 by relying upon plethora of decisions rendered by this Court.

10. In the wake of aforesaid discussion, the submission of the learned counsel for the Appellant fails and this Court finds that there arises no such substantial question of law for being answered in this Appeal meriting its admission.

11. Resultantly, the Appeal stands dismissed. No order as to cost.

.....