

(2007) 09 OHC CK 0029
In the Orissa High Court

Sri Chintamani Das

APPELLANT

Vs

The Joint Commissioner, Settlement and Consolidation of
Orissa and Others

RESPONDENT

Date of Decision : 13-09-2007

Acts Referred:

Constitution of India, 1950 — Article 227

Citation : (2007) CLT 365 Supp : (2007) 2 OLR 710 : (2007) OLR 365 Supp

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

Bench : Single Bench

Final Decision : Dismissed

Judgement

P.K. Tripathy, J.—Heard further argument from the parties, hearing is concluded and the judgment is as follows.

2. Sri Madhusudan Jena, son of Krutibas Jena, opposite party No. 1 in this writ petition filed application u/s 9(3) of the Orissa Consolidation of Holdings and Prevention of Fragmentation of Land Act, 1972 (in short Consolidation Act") with the prayer to record the disputed property of Consolidation Plot Nos. 17 and 43 respectively measuring Ac. 0.20 decimals and Ac. 0.22 decimals in his favour on the ground that the said property belongs to his family, his late father Krutibas executed a deed of mortgage (it should be deed of security) for a loan taken from Chintamani Das, who was opposite party in that claim case and that the registered sale deed of the year 1971 be construed accordingly and, apart from that, the objector remained in possession of the property all throughout asserting his right and interest over the same.

3. Chintamani Das, the opposite party in that proceeding and petitioner in this O.J.C. disputed to the aforesaid contention of the petitioner and contested the case. His claim was that of title on the basis of the registered sale deed of the year 1971, vide R.S.D. No. 4543 dated 13.04.1971.

4. In course of the enquiry conducted by the Consolidation Officer it was brought

on record that after execution of the registered sale deed in the year 1971, application for mutation was filed by Chintamoni in 1984 vide Misc. Case No. 2120 of 1984 of the Court of Tahsildar, Soro. After field enquiry and enquiry in the Mutation Court on 25.10.1986, order was passed by learned Tahsildar stating that title was not conveyed through the registered sale deed of the year 1971 and the recorded tenant of the land, i.e., Madhusudan Jena and his family members are in possession of the disputed property. Accordingly he rejected the application for mutation. It was admitted by the parties that Chintamoni appealed against that order before the Sub-Divisional Officer, Balasore and learned S.D.O. set aside the aforesaid order of the Tahsildar and remanded the case for fresh disposal. Thereafter the Tahsildar did not take up the case for fresh disposal until Consolidation Operation started. The Objector also filed documents in proof of payment of rent of the disputed property and also made oral statement in support of his possession and asserting title thereby. Opposite party (Chintamoni) relied on the sale deed and also made oral statement. Considering the same learned Consolidation Officer on 30.11.1993 allowed the application of the Objector, i.e., Madhusudan Jena and directed to maintain the record in his name by scoring through the name of Chintamoni Das from the draft record.

5. Chintamoni Das preferred Appeal Case No. 3 of 1994 in the Court of the Deputy Director, Consolidation, Balasore in accordance with the provision in Section 12 of the Consolidation Act, Learned Deputy Director, Consolidation set aside the order of the Consolidation Officer, inter alia, on the ground that the question of adverse possession is a factor to be considered by the Civil Court and not by the Consolidation Authorities while in seisin of the matter u/s 9 of the Consolidation Act. He also recorded the finding that Registered Sale Deed No. 4543 dated 13.04.1971 is to be accepted as the document conveying title and not to be termed otherwise.

6. As against that judgment passed by the Deputy Director, Consolidation, Madhusudan Jena preferred Consolidation Revision Case No. 1025 of 1994 u/s 36 of the Consolidation Act. More or less concurring with the factual finding of the Consolidation Officer and rejecting the reasoning assigned by the Appellate Authority, the Joint Commissioner of Settlement and Consolidation, Bhubaneswar passed the impugned order on 31.01.1996 and directed to maintain the record in the name of Madhusudan Jena. Chintamoni Das challenges that order in this writ petition under Article 227 of the Constitution of India.

7. There is well-defined principle for the Court while exercising jurisdiction under Article 227 of the Constitution of India that if finding and conclusion in the impugned judgment is not illegal or if that does not suffer from perversity, then the High Court, in exercise of the supervisory jurisdiction, may not interfere with the order only on the ground of some mistakes committed in the process of adjudication. Remaining alive to the aforesaid legal principle, both the parties address the Court.

Dr. Rath, learned Counsel for the petitioner states that the finding recorded by

the original and revisional jurisdiction to construe the registered sale deed as a deed of mortgage or otherwise is without any evidence in support thereof and, therefore, such findings suffer from perversity and the sale transactions being voidable in nature, the said authorities could not have adjudicated upon the nature of the document for which there is no power vested in them u/s 4 read with Section 51 of the Consolidation Act.

Mr.Senapati, learned Counsel for the Objector/opposite parties argues that admission of Madhusudan Jena in the consolidation proceeding is good enough to dispel any argument in the above manner and when the possession of Madhusudan Jena is accepted at all level at all relevant time and that having been respected by the Consolidation Authorities, no flaw can be found in the impugned order, in fact, he read the statements of both the parties, which was adduced in the Court of the Consolidation Officer.

8. Section 4 of the Consolidation Act provides the effect of Notification u/s 3 (1) of the Consolidation Act and Section 51 prescribes bar to jurisdiction of the Civil Courts relating to the dispute which the Consolidation Authority is competent to decide during prevalence of the notification u/s 3. That includes consideration of the claim of right, title and interest and liability of land lying in the consolidation area. Claim of right and title on the basis of adverse possession is, therefore, adjudicable by the Consolidation Authorities. Statement of Chintamoni before the Consolidation Officer makes it crystal clear that the vender never parted with possession of the property and remained in possession thereof. Irrespective of whether the Registered Deed dated 13.04.1971 is a sale deed, mortgage deed or a deed of security, claim of title on the basis of adverse possession is made out from the aforesaid admission on the part of Chintamoni. This Court finds no illegality in the aforesaid finding recorded by the Consolidation Officer and the Revisional Authority. Findings recorded by the Appellate Court that claim of title by adverse possession cannot be considered by the Consolidation forum is contrary to the provisions of law and rightly that was set aside by the Revisional Court. For the reasons stated above, there is nothing to interfere with the impugned order, and accordingly the writ petition is dismissed. In the given facts and circumstances of the case, parties are directed to bear their respective costs of limitation in this forum.