
(2002) 03 OHC CK 0031

In the Orissa High Court

Case No : Civil Revision No. 378 of 2001

Sri Khagendra Pradhan and Others

APPELLANT

Vs

Umesh Chandra Mohapatra and Others

RESPONDENT

Date of Decision : 15-03-2002

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115

Citation : (2002) 93 CLT 704 : (2002) OLR 807 Supp

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

Bench : Single Bench

Advocate : N.C. Pati and Associates, for the Appellant; G.K. Nanda and R.R. Das, for the Respondent

Final Decision : Dismissed

Judgement

P.K. Tripathy, J.—Heard.

2. This Civil Revision is directed against the order passed on 10th October, 2001 by the learned Ad hoc Addl. District Judge (Fast Track Court), Balasore in Miscellaneous Appeal No. 33 of 1997. Defendants 1 to 4 are the petitioners before this Court.

3. Plaintiffs instituted Title Suit No. 160 of 1996-I in the Court of Civil Judge (Sr. Division), Balasore, inter alia, claiming the suit property as their joint family property and the defendants acquiring no right, title and interest over that land on the basis of a sale deed executed by the Co-sharers. Their further contention is that the gift deed executed by another co-sharer in favour of the defendant No. 9 who is also a co-sharer, is void and did not convey any right and title in favour of that defendant. Plaintiffs also asserted their possession and attempt of the defendants 1 to 4 to damage the crop and interfere with their right and possession. Accordingly, they filed Miscellaneous Case No. 71 of 1996 and prayed for appointment of receiver. Defendants contested to the claim and denied to the allegation of lack of title and possession with the transferer (Defendant No. 9).

They asserted their possession over the case land.

4. Upon consideration of the documents produced by both the parties and referring to their pleadings learned Civil Judge found a prima facie case of possession in favour of the defendants and accordingly rejected the application under Order XL Rule 1, CPC (in short the "Code"). On the contrary, after perusal of the said documents and considering the contention of the parties the appellate Court, though unnecessarily, went in detail to the principle of Hindu Law and the matter relating to inter se alienation but ultimately referring to the relevant fact came to the conclusion that because of several rounds of litigation and different proceedings and the conduct of the parties there is scramble for possession. Accordingly, he passed the following order:

"... The learned Civil Judge (Sr. Division), Balasore is directed to put the suit property to auction in between the parties every year and highest bidder among the parties should be appointed as receiver and bid amount shall be deposited in the Court."

5. In course of hearing Mr. N. C. Pati, learned Counsel for the petitioners brings to the notice of this Court the incorrect aspect of the proposition on Hindu Law which has been discussed and stated by the learned Ad hoc Addl. District Judge. In that process he also refers to the finding of the trial Court being based on material on record relating to prima facie possession in favour of the petitioners. He argues that the above quoted order passed by the appellate Court can be regarded as harsh remedy by compelling their dispossession.

A contrary argument is advanced by learned counsel for the plaintiffs/opposite parties who states that when there is scramble for possession the appellate Court has rightly passed the impugned order.

6. This Court does not propose to re-assess the fact because the same is clearly readable from the orders of the courts below. The facts and circumstances as discussed by both the courts below clearly reveal about scramble for possession and a threatened invasion to the disputed property. Under such circumstance, in the interest of the rightful owner, the course suggested by the appellate Court in proper course to be followed until disposal of the suit. Therefore, this Court finds that the lower appellate court has neither acted illegally nor has exercised his jurisdiction illegally or with material irregularity in passing the above quoted order. Therefore, the operative part of that order needs no interference. It may be noted here that proposition on Hindu Law as has been stated by the learned Ad Hoc Addl. District Judge is obviously erroneous but non-consequential at this stage. This observation is sufficient to take care of that situation.

7. Learned counsel for the petitioners proposes for a direction for early disposal of the suit. Learned Counsel for the plaintiffs/ Opposite parties does not oppose to that contention. Therefore, the trial Court is directed to take up the suit-for hearing and dispose of the same within a period of four months from the date of settlement of issues.

8. With the above observation the Civil Revision stands dismissed.