

(2006) 02 OHC CK 0018
In the Orissa High Court
Case No : O.J.C. No. 3152 of 1995

Sridhara Mohapatra and Others	Vs	APPELLANT
State of Orissa and Others		RESPONDENT

Date of Decision : 14-02-2006

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 20 Rule 2

Citation : AIR 2006 Ori 88 : (2006) 1 OLR 392 Supp

Hon'ble Judges : L. Mohapatra, J

Bench : Single Bench

Advocate : P.K. Routray, P.R. Sutar, N.K. Deo and R.K. Rout, for the Appellant;
B.H. Mohanty, R.K. Nayak, D.P. Mohanty and T.K. Mohanty for Opposite Party
5(a), for the Respondent

Final Decision : Allowed

Judgement

L. Mohapatra, J.—This writ application is directed against the order dated 2-1-1995 of the Commissioner, Consolidation, Cuttack-opposite party No. 2 passed in Annexure-14 as well as the order dated 27-7-1992 of the Consolidation Officer, Jagatsinghpur-opposite party No. 4 passed in Annexure-12.

2. In order to appreciate claims of respective parties the family genealogy as indicated in the writ application is reproduced below:

G E N E A L O G Y -----

Damodar -----			Ananda Janardan
-----			Ananta Basudev
-----			Saraswati Kanchan (O.P.5) = Sricharan
-----			Alekha Banchhanidhi
-----			Lingaraj Kapila Loknath
-----			Baishnab Sadhu Sridhar (P.1) =
Malatilata (P.2) -----			Saroda Sarata
-----			Rabi Biranchi Rudra

The case of the parties stated, in brief, is that the disputed land originally had been recorded in the names of Banchanidhi Mohapatra, Alekha Mohapatra and Janardan Mohapatra. Late Damodar Mohapatra was the original owner, who had two sons namely Ananda and Janardan. Banchhanidhi and Alekha belong to the branch of Ananda. According to the petitioners, the branch of Ananda and Janardan each had 50% share in the properties. Ananda branch was in possession of eastern half whereas Janardan branch was in possession of western half of the properties. Alekha had three sons namely, Baishnaba, Sadhu and Sridhar. The wife of Shridhar is Malatilata. Both Shridhar and Malatilata are the petitioners Nos. 1 and 2 and rest 3 to 6 are the heirs of the petitioners 1 and 2. Similarly, in the branch of Janardan, Janardan had two sons namely, Ananta and Basudev. Basudev had two issues namely, Kanchan and Saraswati. The relevant heirs from the genealogy are taken note for the purpose of this case and, therefore, the descriptions of the other heirs is not given. The further case of the petitioners is that Loknath who is alleged to be the son of Banchhanidhi sold his share of land to Shridhar under registered sale deed dated 31-5-1944. The son of Banchhanidhi namely, Kapil, through his guardian sold certain portion of his land to Malatidevi-petitioner No. 2 under registered sale deed dated 13-11-1953. Sadhu the son of Alekha sold the entire share to Basudev son of Janardan towards eastern side under registered sale deed dated 19-3-1960. It is also the case of the petitioners that on 11-6-1964 there was mutual exchange of properties between Basudev, Ananta and Shridhar. The other transactions alleged by the petitioners are that Basudev gifted his undivided 1/4th share in favour of the Saraswati under a deed of gift on 11 -6-1965 and through a registered partition deed dated 14-4-1967 in the branch of Alekha, the entire share of Alekha extending to 0,6-5 had been allotted to Shridhar and Malatilata and their heirs. In the Hal Settlement of 1983, record of rights in respect of khata No. 698 had been recorded in the name of the petitioners apart from some other properties, which are not in dispute. The Land Register was accordingly prepared during consolidation operation. While the matter stood thus, an objection was filed by the opposite party No. 5 namely, Saraswati belonging to the branch of Janardan for recording the land in her favour on the basis of deed of gift. At the time of hearing of the Objection Case, the said Saraswati produced a copy of the sale deed executed by Sadhu transferring the entire share in her favour and also the deed of gift under which she had received 14th share of Basudev. In the objection case, the Consolidation Officer directed for recording the entire land of 13 decimals in the name of opposite party No, 5 holding that Sadhu belonging to Ananda's branch, having right and title over the property had alienated the same in favour of Basudev. The Consolidation Officer also held that opposite party No. 5 had got the entire land by way of gift deed as well as on the basis of compromise between her heirs and Ananta in T.S. No. 112 of 1969 and was in possession thereof.

3. Challenging the said order passed in objection case, the petitioners preferred

an appeal and the appeal was allowed holding that Ananta and Basudev exchanged their property with petitioner No. 1 and that the petitioners had acquired title in respect of L.R. Plot No. 2792 covering an area of A.06 decimals on the strength of a registered partition dated 24-7-1967. The appellate Court also held that the gift of undivided property by Basudev is void and the compromise decree passed in Title Suit No.] 12 of 1969 is not binding on the petitioners. Challenging the said order of the appellate authority, opposite party No. 5 preferred Revision before the Commissioner. The Commissioner, Consolidation having allowed the Revision, the present writ application has been filed challenging the same.

4. Shri Routray, learned Counsel appearing for the petitioners challenged the order of the Commissioner on the ground that on 7-12-1994 the revision was heard by the then Presiding Officer and the case was posted to 2-1-1995 for judgment. The parties were directed to file their written notes of argument by 23-12-1994. By 23-12-1994, the Presiding Officer had already been transferred and a new Presiding Officer was occupying the post. However, on 2-1-1995 the judgment was delivered by new incumbent, written by his predecessor. This being a technical point raised by the learned Counsel, both parties were heard on this question. There is no dispute that the revision was heard on 7-12-1994 by the Presiding Officer who was holding the post then. The written note of argument was filed on 23-12-1994. The judgment was already written by the previous Presiding Officer, who had already been transferred and the subsequent incumbent delivered the judgment. Since previous incumbent had already written the judgment, the same could be delivered by the Officer succeeding him under Order 20, Rule 2 of the Code of Civil Procedure, Faced with the aforesaid provisions, learned Counsel for the petitioners wanted to argue the writ application on merits.

Shri Routray, learned Counsel appearing for the petitioners referring to the merits of the case submitted that the branch of Ananda and Janardan are entitled to 50% share each and as per the genealogy Sadhu belonging to the branch of Ananda is entitled to 1/12th share. In view of the above, sale of 50% share belonging to the branch of Ananda, by Sadhu alone was beyond his share and, therefore, sale of properties beyond his share is void. Shri Routray also contended that in absence of partition of the properties in branch of Janardhan, no gift could be made by Basudev in favour of opposite party No. 5 and, therefore, the said gift is also void. The properties were partitioned only on 24-7-1967 between the heirs of Ananda and the claim of opposite party No. 5 that there was an earlier partition is without any basis. It was also contended that in view of the deed of exchange, the branch of Janardan was left with no property, which could be transferred to opposite party No. 5 either by sale or by gift or by compromise in a suit. Reference has been made by the learned Counsel to some of the orders passed in different suits to support his contention.

5. Shri Naik, learned Counsel appearing for the opposite party No. 5 disputed the

genealogy given by the learned Counsel for the petitioners and submitted that throughout the proceeding, it was the case of the petitioners that Banchhanidhi had no issues whereas in the genealogy it is shown that he had three sons and some transactions were made by Kapil and Loknath. According to Shri Naik, in the current settlement R.O.R., Banchhanidhi and Alekha had 8 annas interest and remaining 8 annas out of the disputed property belonged to Janardan. By a mutual arrangement, the eastern portion of the disputed land was under possession of Banchhanidhi and Alekha and the western portion was under the possession of Janardan. It was further contended by Shri Naik that after the death of Alekha and Banchhanidhi, Sadhu, the son of Alekha being sole successor, remained in possession of eastern portion of the disputed plot and transferred the same in favour of Basudev, the son of Janardan by a registered sale deed dated 19-3-1960. In view of such transfer, the petitioners branch had no interest over suit plot and, thereafter, Basudev gifted his 1/4th interest to opposite party No. 5 under registered gift deed dated 11-6-1965. The opposite party No. 1, therefore filed Title Suit No. 112 of 1969 before the Second Munsif, Cuttack for partition of the disputed land as well as the other land. The petitioner No. 1 being one of the defendants, the suit was decreed on compromise. Challenging the said decree, the present petitioners preferred the Title Suit No. 72 of 1987 before the Civil Judge (Jr. Division), Jagatsinghpur and the same was dismissed on 31st March, 1993. In the said suit, the petitioners introduced a new story regarding deed of exchange on 11-6-1964 and same was not accepted. It was held by the learned Second Munsif that such deed of exchange was not a valid document. The said judgment was challenged in appeal but without success. In the major settlement operation the suit plot should have been recorded in the name of opposite party No. 5 exclusively but the petitioners managed to get their names recorded in the settlement record of rights. In view of such entry in the record of rights indicating the name of the petitioners, opposite party No. 5 filed the Title Suit No. 113 of 1987 in the Court of the learned Civil Judge (Jr. Division), Jagatsinghpur. During pendency of the said suit, notification for consolidation was published and, accordingly, the parties approached the Consolidation Officer and an objection case was filed by the opposite party No. 5 before the Consolidation Officer.

6. In order to appreciate the rival contentions of the parties, it is necessary to refer to the genealogy given in the writ application. Damodar is the common ancestor and owner of the entire disputed properties of 13 decimals. He had two sons, Ananda and Janardan. Anand had two sons, Alekha and Banchanidhi. Janardan had also two sons Anarita and Basudev. Alekha had three sons, Baishnaba, Sadhu and Sridhar whereas Basudev had one daughter namely, Indumati. Indumati had two daughters, Sarasv/ati and Kanchan. So far as Banchanidhi belonging to Ananda's branch is concerned, there is dispute that as to whether he died leaving behind three issues namely, Lingaraj, Kapil and Loknath or issueless. A bare perusal of the stand taken in the different suits and also before the Consolidation Officer, it appears that the consistent stand taken

was that Banchanidhi died issueless. Therefore, let me proceed with the case of the parties involved in the case, accepting the contention that Banchanidhi died issueless. Out of the total properties belonging to Damodar, Ananda and Janardan are entitled to 50% share each which comes to 6 1/2 decimals each. Ananda had two sons, Alekha and Banchanidhi. Accepting the stand that Banchanidhi died issueless, the entire property belonging to the branch of Ananda fell to the share of Alekha. Admittedly, Alekha had three sons, Baisnaba, Sadhu and Shridhar. Therefore, Baisnaba, Sadhu and Sridhar were entitled to 1/3rd share each of the total property. It is, therefore, clear that the sale of the entire 6 1/2 decimals belonging to the branch of Ananda by Sadhu was beyond his share and the sale in respect of properties beyond the share of Sadhu i.e. 1/3rd of 6 1/2 decimals is without authority and cannot be accepted under law. Accordingly, Basudev in whose favour 6 1/2 decimals were sold is only entitled to 1/3rd of 6 1/2 decimals share of Sadhu and not beyond that. It is, therefore, clear that the claim of Basudev in respect of total share of Ananda's branch is unjustified and he is only entitled to the share of Sadhu which comes to 1/3rd of 6 1/2 decimals.

7. In view of the above, all transactions made by Basudev in favour of Saraswati should stand modified. This basic question with regard to allotment of shares having not been taken note of by the appellate as well as revisional Court, both the orders are liable to be quashed.

The writ application is accordingly allowed and the orders passed by the appellate and revisional Court in Annexures-12 and 14 are quashed. The appellate authority is directed to re-decide the issue keeping the observation made above in mind and proceed accordingly after taking into consideration the different decrees passed by the civil Court and the documents relied upon by the parties. It is further directed that the parties shall appear before the appellate authority on 20th March, 2006 and on their appearance, a date of hearing shall be fixed and appellate authority shall hear the appeal afresh keeping in mind the observations made above and dispose of this appeal in accordance with law.