

(1997) 08 OHC CK 0004
In the Orissa High Court
Case No : Civil Revision No. 79 of 1993

The State of Orissa and Others

APPELLANT

Vs

Sarat Chandra Pradhan and Others

RESPONDENT

Date of Decision : 01-08-1997

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 9
Orissa Consolidation of Holdings and Prevention of Fragmentation of Land Act, 1972 —
Section 3, 4, 51

Citation : (1997) 2 OLR 236

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

Bench : Single Bench

Advocate : C.R. Nanda, Addl. Standing, for the Appellant; Pradipta Mohanty and D.N. Mohapatra, for the Respondent

Final Decision : Allowed

Judgement

P.K. Mohanty, J.—This civil revision is by the State Government against the order of abatement of the suit passed by the Additional Subordinate Judge. Puri.

2. The brief facts of the case are that the State; through the Collector and the Divisional Forest Officer, Puri filed Title Suit No. 59/231 of 1992/88 in the Court of Subordinate Judge, Puri for declaration of their right, title and interest over the suit property and that the decree dated 6.4.1983 passed in Original Suit No. 150 of 1981-I was not binding on the plaintiffs, nor does it affect their right, title and possession over the said land. A decree for permanent injunction restraining the defendants from interfering with the possession of the plaintiffs was claimed. It was pleaded that the suit property was an intermediary interest known as : Laxminarayan Estate and the entire estate vested in the State free from all encumbrances, under the provisions of the Orissa Estates Abolition Act. 1951 (hereinafter called "the O.E.A. Act) since November, 27, 1953, On and from the date of vesting, the entire land so wasted remained fallow and none of the intermediaries made any application for settlement of these lands under Sections

6 and 7 of the O.E.A. Act. In or around 1979, casurina plantations were made by the State over those lands. The defendants 1 and 2 filed a collusive suit bearing O.S. No. 150 of 1981 before the Subordinate Judge, Puri claiming for declaration of tenancy on the plea that they had been inducted as bhag tenants in respect of those lands by one Suresh Chandra Bose and they used to raise vegetables and give half of the usufructs as bhag dues. It was pleaded that State Government though a necessary party was deliberately not made a party thereto, to the suit and an ex parte decree was obtained by the defendants. Pursuant to such illegal decree they got their names mutated (error) in the revenue records.

3. The defendants filed a petition for abatement of the suit in view of the consolidation Notification issued u/s 3 of the Orissa Consolidation of Holdings and Prevention of Fragmentation of Land Act 1972 (hereinafter called the "Consolidation Act"). The plaintiff-petitioners filed their objection inter alia on the ground that the relief, claimed in the suit being not within the scope and competence of the consolidation authorities the suit does not abate at all. The learned Subordinate Judge by order dated 21.1.1993, however held that the suit being one for declaring right, title and interest in the suit property and the claim for permanent injunction being consequential to such declaration, the consolidation authorities are competent to adjudicate the matter and therefore the suit shall abate.

4. Having heard the learned Additional Standing Counsel, for the petitioners-State and Shri P. Mohanty, learned counsel for the opp. parties and having gone through the records, the main question that needs determination is whether in view of the prayer and the pleadings of the parties, the Consolidation authorities are competent to decide and adjudicate the dispute within the scope and ambit of the Consolidation Act.

5. The petitioners-State filed the, suit claiming the following reliefs:

"(a) Pass a decree declaring the exclusive right, title of the plaintiff . No. 1 (one) over the disputed property as detailed in schedule-A below and possession of the plaintiff be confirmed.

(b) Declare that, the decree dated 6.4.1983 (sixth April Nineteen hundred eighty three) passed by the Subordinate Judge, Puri in O.S. No. 150/1981-I (one hundred fifty of Nineteen hundred eightyone Class-I) is not binding against the plaintiff, nor does affect the title to and possession over the disputed property.

(c) Pass, a decree for permanent injunction against the defendants restraining them from removing the casurina trees and billots from the disputed plot No. 1037 (one thousand thirty seven) and from interfering in the possession of the plaintiffs over the suit property.

(d) Any other relief to which the plaintiffs are found entitled to also decreed.

(e) Cost of the suit be also decreed against the defendants."

6. On a reading of the aforesaid reliefs claimed in the suit, it is abundantly clear that the main relief prayed for was for declaring the decree dated 6.4.1983 in O.S. No. 150/1981-I as not binding against the plaintiffs nor does it affect the title and the possession over the disputed property. Sub-section (4) of Section 4 of the Consolidation Act reads as follows :

4. Effect of notification-

xxx xxx xxx xxx (4) every suit and proceedings for declaration of any right or interest in any land situate within the consolidation area in regard to which proceedings could be or ought to be started under this Act, which is pending before any Civil Court, whether of the first instance or appeal, reference on revision shall, on an order being passed in that behalf by the Court before which such suit or proceeding is pending, stand abated:

Provided further that on the issue of a notification under Sub-section (1) of Section 5 in respect of the said area or part thereof :-

(a) every order passed by the Court under Clause (4) in relation to the lands situate in such area or part thereof, as the case may be, shall stand vacated; and

(b) all such suits and proceedings as are referred to in Clause (3) or Clause (4) which relate to lands situate in such area or part thereof, as the case may be, shall be proceeded with and disposed of in accordance with the law as if they had never abated:

Provided also that such abatement shall be without prejudice to the right of the person affected to agitate the right or interest which formed the subject matter of the said suit or proceeding, before the proper consolidation authority in accordance with the provisions of this Act of this rule made thereunder.

7. A Full Bench of this Court in Sundarmani Bewa and Another etc. Vs. Dasarath Parida (deceased by L.R.) and Others etc., have ruled that before holding the jurisdiction of the Civil Court to entertain a suit is ousted under the provisions of the Act, two essential ingredients are to be found, that the disputed property is included in the consolidation scheme and the relief sought in the suit can be granted by the authorities under the Act. If any of these conditions is not satisfied in a case, then the suit will not abate u/s 4(4) or Section 51 of the Act". If the relief sought in the suit is available to be granted by the authorities under the Act, it may so happen that the land in question may come within the consolidation scheme and the authorities under the statute are vested with the power to deal with it for the purpose but the particular controversy raised in the suit and the relief sought therein may not be within the jurisdiction of the authorities. In such a situation, the common law forum, which has the jurisdiction to adjudicate upon all controversies, relating to civil matters, cannot be held to have lost its jurisdiction.

8. The relief claimed in the suit as quoted in the foregoing paragraphs is totally dependent on the declaration that the decree dated 6.4.1983 passed in P.S. No.

150 of 1981-I of the Subordinate Judge, Puri is not binding against the plaintiffs nor does it affect the title. In *Pagal Das and Ors. v. Upendra Dutta and Ors.* 1988 (II) OLR 347, this Court, after considering several decisions of this Court as well as the Supreme Court in the case of *Gorakh Nath Dube Vs. Hari Narain Singh and Others*, held that there is a distinction between cases where a document is wholly or partially invalid so that it can be discarded by any Court or authority and where it has to be actually set aside before it can cease to have legal effect. Therefore, where a document has the legal effect it can only be taken away by setting it aside or cancelling the same, the Consolidation authority will have no power to cancel and in such a case, the suit will not abate. In the case at hand, a decree of the competent Civil Court i.e. Subordinate Judge, Puri in O.S. No. 150/1981-I is sought to be avoided and the declaration is sought that the same is not binding on the plaintiffs having been obtained by collusion and fraud. There can be no doubt that a decree of a competent Civil Court is not available to be nullified or avoided by the consolidation authorities while resolving the dispute and as such the jurisdiction of the Civil Court cannot be ousted by virtue of the notification u/s 3(3) of the Consolidation Act. The finding of the trial Court is misconceived inasmuch as the learned Subordinate Judge could not have found that declaration of the right, title and interest being within the competence and domain of the Consolidation Authority the further reliefs claimed are consequential and as such, the Civil Court jurisdiction is ousted. The trial Court has absolutely misconceived the scope of the suit and the relief claimed. Unless and until it is declared that the earlier decree does not bind the State and does not take away the right, title and interest of the State, the question of grant of plaintiffs right does not arise.

9. The authorities under the Consolidation scheme and the Act are not vested with the power to sit over Judgment of a Civil Court nor are they competent to set aside and nullify a Civil Court decree and determine the right, title and interest thereon. In that view of the matter, even if the disputed land comes within the consolidation area, the authorities under the Consolidation Act being not competent to decide the dispute, the jurisdiction of Civil Court is not ousted.

10. In that view of the matter, the impugned order of the learned Subordinate Judge, Puri now Civil Judge (Senior Division), Puri cannot be sustained in law and has to be set aside and so I do. The Civil Revision is allowed and the impugned order is set aside. The trial Court is directed to proceed with the suit in accordance with law expeditiously with all reasonable despatch.

There shall be no order as to costs.