
(2007) 06 OHC CK 0055
In the Orissa High Court

Tulasi Bewa and Others

APPELLANT

Vs

Lilanka Sashi Ray and Others

RESPONDENT

Date of Decision : 20-06-2007

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115, 47
Constitution of India, 1950 — Article 226, 227

Citation : (2007) 104 CLT 145 : (2007) 2 OLR 200 : (2007) 11 OLR 200

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

Bench : Single Bench

Final Decision : Dismissed

Judgement

P.K. Tripathy, J.—Order passed on 16.05.1998 by the Learned Civil Judge (Junior Division), Banpur in M.J.C. No. 4 of 1991 and the confirming order passed on 6.2.1999 in Civil Revision No. 10 of 1998 by the Learned Addl. District Judge, Khurda are under challenge.

2. Petitioners claim to be the legal representatives of late Rankanath Behera. Opposite Party members are the decree-holders being the heirs and successors of late Ananga Sashi Ray. The disputed property admittedly was recorded in the name of Ananga Sashi Ray. According to the case of Rankanath Behera, the said land was settled in his favour u/s 9 of the Orissa Land Reforms Act, 1960 (in short, "OLR Act") as per order of Tahasildar, Banpur in O.L.R. Case No. 132 of 1970 and therefore, Title Suit No. 14 of 1980 filed by the Opposite Parties and the decree obtained therein for title and recovery of possession is not executable, inasmuch as, the jurisdiction of Civil Court was barred u/s 67 of the O.L.R. Act. Accordingly, legal representatives of Rankanath filed application u/s 47, CPC in Execution Case No. 2 of 1990 of the Court of Civil Judge (Junior Division) Banpur. That application was registered as M.J.C. No. 4 of 1991. Decree holders/ Opposite Party members opposed to that application, inter alia, on the assertion that Rankanath was allowed to stay in the premises as a servant of Ananga Sashi Ray. Rankanath attempted to get land recorded in his name and accordingly, he

filed OLR Case No. 19 of 1966-67. The owner of the property (Ananga Sashi Ray) contested that case and the O.L.R. case was dismissed. Rankanath challenged that order in O.L.R. Appeal, but without any result. Ananga Sashi Ray died on 31.3.1970. After his death, suppressing aforesaid material fact, Rankanath again filed O.L.R Case No. 132 of 1973 and obtained an order behind the back of the Plaintiffs/ decree holders. Thus, that order of the Revenue Officer was challenged as nullity and suit was filed. That suit was decreed in favour of the Plaintiff for recovery of possession and therefore, that decree is not barred u/s 67 of the O.L.R. Act and accordingly, the decree is executable.

3. On consideration of the aforesaid contention of both the parties, both the Courts below recorded finding that the decree passed by the Learned Civil Judge under the given facts and circumstance, cannot be said to be without jurisdiction and therefore, the executing Court cannot go beyond the decree. With such finding, application u/s 47, C.P.C. was rejected.

4. Petitioners reiterated the same contention and argued that in view of the ratio in the cases of Brajabehari Patnaik Vs. Hari Behera and Others, and Dama Swain Vs. Gangadhar Mohapatra, jurisdiction of the Civil Court to decide the suit was without jurisdiction and, therefore, the decree is a nullity and not executable.

5. The citations relied on are Judgments of this Court in second appeals. Keeping in view the nature of the dispute in such proceeding, which are not similar to the present one, it was held that the revenue Court had the jurisdiction to determine the question of tenancy and therefore, Civil Court cannot determine that aspect and accordingly held that such suits were not maintainable in view of the prohibition provided u/s 67 of the O.L.R. Act. After perusal of the aforesaid two citations and considering the facts and circumstances involved in this case, it is seen that the order of the revenue Court in those proceedings was not challenged on the ground, which was relied on and persuaded by the Plaintiffs/ decree holders in the present case. Learned Civil Judge in the suit determined the issue by accepting the case of the Plaintiffs that the order of the Revenue Officer is a nullity in view of suppression of all material facts by Rankanath and the O.L.R. case being disposed of without notice to the owners of the property. Petitioners or their predecessors in interest i.e. Rankanath did not chose to appear in the suit or to raise objection on jurisdiction of the Civil Court, and therefore, he cannot be permitted to raise such question for the first time in the execution proceeding when the jurisdiction of the Civil Court u/s 9 entitles the Civil Court to "try all suits of civil nature excepting suits of which their cognizance is either expressly or impliedly barred". Whether, the civil suit was to come within that prohibited category so as to oust the jurisdiction is a matter to be considered on proved facts and by proper interpretation of law. When the Defendants/Judgment debtors did not chose to raise such a plea in the suit, such plea cannot be considered being raised for the first time in the execution proceeding.

6. Apart from that, the decisions of the Courts below in rejecting the application

u/s 47, C.P.C. does not appear to be illegal or without jurisdiction. Findings recorded therein also do not suffer from perversity. Petitioners having resorted to the jurisdiction u/s 115, C.P.C. cannot again resort to the jurisdiction under Article 227 and Article 226 without showing exceptional circumstance for invoking the extraordinary writ jurisdiction. For the reasons stated above, Writ Petition does not bear any merit and accordingly, the same is dismissed. No cost. The record of the O.L.R. case be returned to the Tahasildar, Banpur.