

IN THE HIGH COURT OF ORISSA AT CUTTACK
W.P.(C) No.7354 OF 2003

Jaina Prasad Mohanty *Petitioner(s)*
Miss.M.Mihsra,Adv.

-versus-

Surendranath Mohanty and others *Opposite Party(s)*
Mr.S.Mohanty,Adv.
Mr.P.Kar, Adv.

CORAM:
JUSTICE BISWANATH RATH

ORDER
23.09.2022

Order No.

18. 1. Heard learned counsel for the Parties.
2. Background involving the case is a proceeding under Section 9(3) of O.C.H. & P.F.L. Act being initiated by Opposite Party No.10, the objection case has been allowed ex-parte. In hearing of the Appeal, Appellate Authority remands the proceeding to C.O. for fresh disposal of the matter when it appears to have been allowed in favour of Opposite Party No.10. An Appeal being preferred, is allowed vide Annexure-2.
3. Unsuccessful respondent preferred a proceeding under Section 36 of the O.C.H. & P.F.L. Act which is disposed of vide Annexure-A/1 allowing in part, resulting of filing of the Writ Petition by the Opposite Parties in the objection case. Advancing her submission Miss. Mishra, learned counsel for the Petitioner taking this court to the ground to challenge on initiation of Section 9(3) being involving a right is already accrued in favour of Opposite Parties therein, the Petitioner herein through a registered Ekrarama. Miss.Mishra, learned counsel for

the Petitioner contended once an Ekrarama is found to be registered unless the competent authority has examined such aspect and decided making the same ineffective, the authority under the Consolidation of O.C.H & P.F.L Act will be bound by the same.

5. This Court observes, the Appellate Authority having understood the validity and future course of action dependant on registered Ekrarama has rightly come to allow the Appeal in favour of the Petitioner. Revisional Authority erroneously failed to appreciate the Ekrarama and accordingly committed wrong in ignoring the effect of Ekrarama, merely on the basis of dictation of certain lapses on the face of Ekrarama.

6. In the circumstance Miss. Mishra, learned counsel for the Petitioner requests this Court for interfering and thereby restoring order at Annexure-2, Opposite Party Nos. 1, 3 and 5 followed the claim of the Petitioner. Learned State Counsel however taking this court to the observation in the Revision order at Annexure-1 attempted to find the same justified. Mr.Ghose, learned Additional Government Advocate however has no denial to the claim of the Petitioner on the effect of registered Ekrarama on the Consolidation Courts and the limited scope available with the Commissioner in such matters.

7. Considering the rival contentions of the Parties, this Court finds there is clear pleading of the Petitioner throughout all the three proceedings claiming their right through registered Ekrarama. For the opinion of this Court even though the Consolidation authority has the power to adjudicate on the right, title and interest of parties but since the claim of the Opposite Parties based on a registered instrument unless such registered instrument is declared by appropriate Court of law invalid, authorities under consolidation of O.C.H. & P.F.L. proceeding is bound by contents therein.

8. In the circumstance this Court finds the revisional authority failed in appreciating the effect of registered instrument involved therein. Accordingly this Court finds impugned order vide Annexure-1 becomes illegal. In the circumstance this Court interferes in the order at Annexure-1 sets aside the same and restores the Appeal order at Annexure-2.

9. The Writ Petition succeeds however no orders as to cost.

(Biswanath Rath)
Judge

Swarna

