

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C). No.13501, 13502, 13504, 13505 & 13353 of 2003

In the matter of an application under Article 226 & 227 of the Constitution of India.

In W.P.(C).No.13501 of 2003

Raghunath Satpathy & Anr. ... Petitioners

Versus

Commissioner, Consolidation,
Bhubaneswar & Ors. ... Opposite Parties

In W.P.(C).No.13502 of 2003

Giri Satpathy & Ors. ... Petitioners

Versus

Commissioner, Consolidation,
Bhubaneswar & Ors. ... Opposite parties

In W.P.(C).No.13504 of 2003

Raghunath Satpathy & Anr. ... Petitioners

Versus

Commissioner, Consolidation,
Bhubaneswar & Ors. ... Opposite parties

In W.P.(C).No.13505 of 2003

Raghunath Satpathy & Anr. ... Petitioners

Versus

Commissioner, Consolidation,
Bhubaneswar & Ors. ... Opposite parties

In W.P.(C).No.13353 of 2003

Giri Satpathy & Anr. ... Petitioners

Versus

Commissioner, Consolidation,
Bhubaneswar & Ors. ... Opposite parties

For Petitioners ... M/s. S.K.Mishra, S.Nanda,
M.R.Dash & P.Sahu.

For Opposite Parties ... Mr.U.K.Sahoo, Addl. Standing Counsel.

(In all the writ petitions)

Mr.R.Panigrahi,
D.Panigrahi,H.Maharana &
D.Misra,

(For O.P. no.4 in W.P.(C).No.13353
of 2003)

J U D G M E N T

PRESENT:

THE HONOURABLE JUSTICE BISWANATH RATH

Date of Hearing: 19.09.2022 Date of Judgment:30.09.2022

Biswanath Rath, J. These batch of writ petitions involve a challenge to the common order passed by the Revisional Authority in exercise of power under Section 36 of the O.C.H. & P.F.L. Act, 1972 in deciding the Revision Case Nos.453 of 1998 to 469 of 1998 in a composite order dated 30th April, 1999 thereby setting aside the orders of the Original Authority passed under Section 9(3) of the O.C.H. & P.F.L. Act, 1972 thereby also interfering in equal set of appeals preferred under Section 12 of the Act. These five writ petitions have been filed, more particularly, involving Revision Case No.462 of 1998, Revision Case No.468 of 1998, Revision Case No.454 of 1998, Revision Case No.467 of 1998 and Revision Case No.458 of 1998 respectively. All the objection cases appear to have been filed by Tulasi @ Jati Satpthy, opposite party no.4 in

all the writ petitions involved herein. All the writ petitions have been filed against opposite party no.4 but, however, involving 5 objection cases out of 21 objection cases taken up together and all the objection cases were filed by opposite party no.4 herein.

2. W.P. (C).No.13501 of 2003 involves Objection Case No.1185 of 1992 dismissed by common order dated 29.09.1994. Appeal No.188 of 1994 being preferred, the appeal was dismissed on 11.08.1998 and involved Revision Case No.462 of 1998. Similarly, W.P.(C) No.13502 of 2003 involved Objection Case No.1184 of 1992 being dismissed on 29.09.1994 landed in Appeal No.182 of 1994 again involved Revision Case No.468 of 1998. W.P.(C).No.13504 of 2003 involved Objection Case No.1187 of 1992 undertaken in Appeal No.183 of 1994 and revision of the petitioners is Revision Case No.367 of 1998. W.P.(C).No.13505 of 2003 involved Objection Case No.1186 of 1992 and Appeal No.192 of 1994 both reversed in Revision Case No.458 of 1998. Similarly, W.P.(C).No.13353 of 2003, Objection Case No.1215 of 1992 dismissed, which order is confirmed in Appeal No.196 of 1994 and both the orders reversed in Revision Case No.454 of 1998 as per the information provided by the petitioners involved herein through paragraph-1 of the writ petitions.

3. Undisputedly, objection cases involved herein were rejected. Appeal being preferred, appeals have also been dismissed in confirmation of the order in the objection case but all such orders however reversed in the revisions by the Revisional Authority resulting in filing of the writ petitions.

4. Further undisputed fact reveals from the discussions in the objection cases involved, mother of the objector, Tulasi had alienated the property. Sole ground of challenge in all the writ petitions and as raised by Mr.Samir Kumar Mishra, learned counsel for the petitioners that in all the cases appear to be based on Gift Deed No.1190 dated 24.04.1936. There already involved several transactions and for the gift deed not being void, however the Revisional Authority had scope to interfere in the gift deed to come to his conclusion in allowing the revision. Learned counsel for the petitioners challenges the revisional order at Annexure-3 on the premises that private opposite party, objector not being the daughter of the donor, whether the claim by such daughter claiming to be the daughter of the owner of the property is acceptable?. It is also contended that the Consolidation Authority has no power to decide on the claim of the objector being the daughter of the owner of the property. It is in the circumstances,

Mr.Mishra, learned counsel contended the Revisional Authority went on wrong in passing the revision order in setting aside all the orders of the objection cases by the Original Authority as well as Appellate Authority.

5. Mr.Sahoo, learned Additional Standing Counsel appearing for the State Authorities in the defence of the order of the Revisional Authority involving all the cases and brought common point of law involved herein that for the background involving the cases and from the material being established contended that the Gift Deed dated 24.04.1936 at the instance of the widow of Udaya Nath Pati, the mother of opposite party no.4 clearly contains a narration that Maguni, the father of opposite party no.4 had the only daughter, namely, Tulasi. Mr.Sahoo, learned Additional Standing Counsel further also brought to the notice of the Court through the recording by the Consolidation Officer in the objection cases, examination of one witness Chemai Pati being one of the co-sharer of Udaya Nath Pati. From his chief and cross-examination, it is revealed that Dulla and Jyoti were not the same person rather Jyoti and Tulasi, the opposite party no.4 were the same person. It is in the circumstance, Mr.Sahoo, learned Additional Standing Counsel contended that Tulasi being the daughter of Udaya Nath

vis-à-vis the mother, Maguni had no right to gift the whole property after the death of Uday Nnath and Tulasi's interest became absolute in the year 1956 after Hindu Succession Act is brought.

6. Considering the rival contentions of the parties, this Court finds that objector, the opposite party no.4 involved herein in all the writ petitions, the applicant in all objection cases had a clear case that the suit property relates to late Udaya Nath Pati as per 1928 settlement record-of-right. After death of Maguni, she became the sole owner of the property and even though she made such claim in the year 1982 settlement, unfortunately the record-of-right was wrongly prepared in favour of opposite party therein. In the above background of the case, the Commissioner in the course of hearing has recorded that after examination of the material evidence on record, both parties admitted that the suit land was exclusive property of Udaya Nath, father of Tulasi, who died in the year 1932 leaving behind widow Maguni and only daughter Tulasi Devi. Further recital in the Gift Deed executed in the year 1936 also clearly discloses Maguni then had only daughter, namely Tulasi and the Gift Deed was executed in favour of Kulamani, her son-in-law, undisputedly the husband of Tulasi. This Court here

finds the claim of the petitioner that Gift Deed being void *ab initio* is against law as all properties remained in the family Tulasi and her husband Kulamani untenable. There involved a dispute by the petitioners in all the cases raising a doubt on Tulasi being the daughter of Maguni with so many disclosures from the pleadings of the parties as well as the disclosures through a registered gift deed, the petitioners claim that Tulasi was not the daughter of Maguni as well as Uday Nath remain unfounded. For the opinion of this Court, unless such aspect is decided by the competent court of law, there is no merit in making such claim in consolidation proceeding as even otherwise the Consolidation Authority has no jurisdiction to take up even such issue. Further, the depositions before the Consolidation Officer also reveal the opposite parties therein the petitioners herein had admitted that they were managing the affairs of Maguni till her death in the year 1971. Therefore, the opposite parties have no ray of scope in putting their such objection to the objection cases. On the question of execution of deed by Maguni, this Court again observes even though the authority decision is accepted in the sake of argument but not admitted that for the survival of the daughter Tulasi, mother had no right to gift away the property of her husband without consent of the daughter

even it is taken away, mother Maguni was surviving till 1971, it is in the whole background of the cases and for the clear findings of the Revisional Authority, this Court finds there is no infirmity in the revision orders. Besides there is also a legal point involved herein inasmuch as when more than a dozen of objection cases finally disposed of in more than dozen of revisions, the common findings of Revisional Authority having been accepted on the same footing involving a large group of opposite parties numbering in a large number of revisions, there is no possibility of taking a different view or involvement on the challenge of said order by few of the opposite parties, the petitioners herein, as there will be possibility of two different finding on the same set of plea and objections, which is not possible in the eye of law. No writ petition can be entertained involving such order when 12 of the parties remain satisfied and the writ petitions are only at the instance of 5 set of petitioners.

7. In the result, the writ petitions dismissed. No cost.

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Biswanath Rath, J.

*Orissa High Court, Cuttack.
Dated the 30th day of September, 2022/SKS.*