

IN THE HIGH COURT OF ORISSA AT CUTTACK
W.P.(C) No.1409 OF 2004

Mst. Sakrabati Sahu

....

Petitioner(s)
Mr.A.P.Bose,Adv.

-versus-

Netrananda Padhan and others

....

Opposite Party(s)
Mr.U.K.Sahoo,ASC

CORAM:
JUSTICE BISWANATH RATH

ORDER

11.10.2022

Order No.

11. 1. Even though there is appearance for contesting Opposite Parties, nobody is present to contest this proceeding. Hearing is concluded based on material available on record.
2. Background involving the case is that on the death of father undisputedly their remain L.Rs by way of Petitioner, the sister and private Opposite Party No.1, the brother being the son and daughter of the deceased Padhi Pradhan. It is alleged that during settlement the brother has recorded entire property left by deceased father in his name. Sister coming to know the recording of entire property in the name of brother finding no other option was compelled to undertake the proceeding under Section 37(1) of the O.C.H. & P.F.L. Act registered as Revision Case No.309 of 1994. This 37(1) proceeding being disposed of, the dispute was remanded to the original authority registered as Remand Revision Case No.309 of 1994 for a lawful decision by the Consolidation Officer.

3. Considering the rival contentions there, the original authority- the Consolidation Officer allowed the application however reducing the entitlement of the sister. Sister, the Petitioner here is not aggrieved by the order of the Consolidation Officer. Brother as Opposite Party No.1 here being aggrieved preferred appeal under Section 12 of O.C.H. & P.F.L. Act which was registered as Appeal No. 06 of 2001. Appeal got dismissed upholding the decision of the Consolidation Officer resulting bringing consolidation Revision No.494 of 2002 by Opposite Party No.1. Revision being allowed in reversal of the order of the original authority as well as appellate authority bringing in the present Writ Petition.

4. In the above background, Mr.Bose, learned counsel for the Petitioner taking this Court to the discussion in the revisional order contended the revisional authority has entered into a third case deciding the case in favour of a person particularly the mother of both the Petitioner and opposite party No.1 undisputedly dead.

5. In the circumstance and for giving the wrong direction to the revision proceeding, Mr.Bose, learned counsel for the Petitioner contested the revisional order and requests this Court for interfering in the impugned order.

6. Mr. Sahu, learned State Counsel attempted to support the view of the revisional authority and requests this Court for dismissal of the Writ Petition. For the discussion and finding this Court finds, there is however no denial to the fact by the time, Revision was heard even at the time of hearing of Consolidation Officer, the mother was not survived.

7. Considering the rival contentions of the Parties, and as this Court finds there is no dispute with the factual aspect that mother of the Petitioner and Opposite Party No.1 did not survive even at the

time of considering the Remand Revision Case No.309 of 1994 the revisional authority appears to have adopted a unknown and uncalled procedure. In the circumstance and for wrong approach of the Commissioner, this Court finds the order at Annexure-3 is not sustainable in the eye of law. This Court thus interferes in the order at Annexure-3 and sets aside the same thereby restoring the order of competent authority in Remand Revision Case No.309 of 1994 vide Annexure-1.

8. The Writ Petition succeeds but however there is no order as to cost.

Swarna



(Biswanath Rath)
Judge