

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C). No. 7103 of 2009

Gunanidhi Das & Ors.

....

Petitioner(s)

Mr.Ch.P.K.Mishra, Adv.

-versus-

Baidyanath Nayak & Ors.

....

Opp.Party(s)

Mr.S.Ghose, AGA

None for private O.Ps.

CORAM:

JUSTICE BISWANATH RATH

ORDER

14.12.2022

Order

No.

17

1. Heard learned counsel appearing for the parties.
2. Taking this Court to the genealogy available at page 5 of the brief on the premises Gangadhar died leaving his all properties in his wife Rekhi Bewa, on death of Rekhi Bewa being issueless and as in the meanwhile there was already death of Rangadhar the other brother of Gangadhar, Petitioners claimed all such properties devolved in the successors of late Rangadhar on the three sons. It is stated that these sons entered into particular two sale deed with the second set of objectors attempted to open another objection case after obtaining an order in a 37(1) of O.C.H. & P.F.L. Act proceeding by sales taking place on 25.10.1945 & 28.12.1954 running page 16 and 28 of the brief. It is also claimed that involving above sales, vide Annexure-2 (series) the property in the family of 2nd set objectors attempted for partition in the year 2000, not only that there is also an attempt for settlement of property acquired by the sales herein almost vide Annexure-3 running page-35 of brief. Learned Counsel for the Petitioner here claimed that the 2nd set of objectors raising their claim in respect of all Ac.0.41 decimals of land by virtue of a purported sale deed in the survival of Rekhi

Bewa drawn on 29.04.1935 is completely unbelievable. It is in the circumstance while supporting the order passed by the C.O. vide Annexure-6 the Petitioners here challenged the impugned orders at Annexures-8 & 9 on the premises of no application of judicious mind.

3 In spite of appearance of a set of counsel for Opposite Party No.1 and Opposite Party No.2(b) nobody is appearing to contest the writ petition.

4. Mr. S. Ghose, learned counsel appearing for the State for the reasoning in Annexures-8 & 9 attempted to take support of both the impugned orders.

5. Taking into account the factual background and the case of the parties in the original proceeding vide Annexure-6 while also keeping in view the grounds raised herein this Court finds, the Consolidation Officer taken down the case of the parties through last unnumbered paragraph starting from page 47 till end of 1st from page 50 finds, reveals as follows:-.

“ The crux of the petitioner Gunanidhi Das and others is that the suit land bearing C.S. Plot 772-0.20 and C.S. Plot 693-0.221 total 0.41 under sabik khata 176 of village Santara was originally beyond to Gangadhar Das and Rangadhar Das and they were in joint mess with Rekhi. Gangadhar Das and his wife Rekhi had no issue. Rangadhar was died leaving behind his three sons Kapila, Sankar and Dhadi. Kapila died issueless. Sankar was died leaving behind his two sons Dhruva and Purusottam petitioner no.2 and 3. Dhadi died leaving behind his son Gunanidhi, petitioner No.1. As Gangadhar and his wife Rekhi were no legal issue, the C.S. Plot 772-0.20 and C.S. Plot 693-0.21 is inherited by the legal heirs of Rangadhar i.e. Sankar, Kapila and Dhadi. Kapila during his life time sold 0.06 of land out of C.S. Plot 772 to Chakradhar Naik vide R.S.D. No.4193 dtd.29.6.65. Similarly, Sankar and Dhadi sold 0.05 out of C.S. Plot 693 Ac.03 from C.S. Plot 772 to Chakradhar Naik, the father of O.P. vide RSD No.6166 dt.29.12.54. The father of the O.P. has filed a before Settlement Authority to record his purchased land 0.4 on the basis of aforesaid sale deed and vide 'Una' mistake No.75 and purchased land of Chakradhar Naik has been mutated. During that time Baidyanath Naik O.P. and petitioner in R.P.No.981/92 has put his signature being present in the Court on behalf of his father. In consolidation operation, although O.P. Baidyanath Naik and his brother are entitled 0.14 of land Ac.0.17 has been recorded in their favour. Hence this Revision. The case of O.P. Baidyanath Naik and others is that 1930 settlement record Rekhi Bewa w/o Late Gangadhar Das has been exclusively recorded in respect of the case land bearing C.S. Plot No.693-0.21 and C.S. Plot 772-0.20. The name of petitioners or the name of their ancestors are no way connected to

the case land. Rekhi Bewa being exclusive owner sold the said land to Gokhei Nayak who is the grandfather of Baidyanath Nayak vide RSD No.1624 dt.29.4.35. The sale deed No.1624 dt 29.4.35 is neither cancelled nor set-aside in proper court of law. So the sale deed is to be accepted as to primary document through which the right, title and interest of Rekhi has been transferred to Gokhei Naik. The petitioner are the legal heirs of Rangadhar Das and their properties have been separately recorded in the name of Dhadi Das, Sankar Das S/o Rangadhar Das in 1930 Settlement R.O.R.. So the sale deed executed by Kapila Das on 29.6.45 and the sale deed executed by Sankar Das and Dhadi Das on dt.29.12.54 are void abinitio. They had no locustandi to execute such deeds. It is settled principle of law that so long as a document is not cancelled it cannot be over looked by the consolidation authority unless it is cancelled through proper court of law and the consolidation officer has no power to cancel a deed. Hence the suit plots may be recorded in favour of Baidyanath Naik and others exclusively.”

Reading the factual aspect taken down by the original authority, this Court is unable to believe the case of second set of objectors, the contesting opposite parties herein for entering into subsequent sales on 25.10.1945 and 28.12.1954 and for their attempting for settlement of such properties in their favour again involving a portion and further for making attempt without taking aid of claimed sale deed in 1938 and thus this Court finds, the C.O. has rightly come to the rescue of the petitioners.

6. Finding of the appellate authority appears to be incongregation of the factual aspect that the private opposite parties entered into purchase in the year 1945 and 1955 respectively from the first party person. Not only that there is also entering into a family partition in the year 2000 on the basis of acquisition through the sale dated 26.09.1945 and 28.12.1954. Further, there is also further development through Annexure-2, at page 35 of the brief that there is a attempt for claim of settlement on the basis of the aforesaid two sale deeds. It is in this view of the matter, if at all the second set of objectors claim their right by virtue of a sale deed dated 29.04.1935 involving the sale transaction with Rekhi Behera for all these developments narrated hereinabove, this Court finds the claim of the second set of objector was wholly unbelievable. They had to

clean approach and bringing a surprise attempt at later stage. It appears, the Appellate Authority as well as Revisional Authority both failed in appreciating the above legal aspect and both thus arrived in wrong assessment.

7. In the circumstance, this Court finds the order at Annexure-8 is not sustainable in the eye of law. Consequentially, the order at Annexure-9 passed by the revisional authority dependant on the outcome in appeal vide Annexure-8 must go. In setting aside the orders at Annexures-8 and 9, this Court confirms the order of C.O. passed vide Annexure-6.

8. The writ petition thus stood disposed of.

(Biswanath Rath)
Judge



Sks