

ORISSA HIGH COURT : C U T T A C K

O.J.C. No.14572 of 1999

*An application under Article 227 of
the Constitution of India, 1950*

In O.J.C. No.14572 of 1999

Bhikari Charan Baral

: Petitioner

-Versus-

Balamukunda Swain & Anr.

: Opposite Parties

For Petitioner

: M/s. N.C. Pati,
S. Mishra,
S. Tripathy

For Opposite Party No.1

: None

For Opposite Party Nos.2 to 4

: Mr. S.P. Panda,
Addl. Govt. Adv.

WITH

In O.J.C No.14539 of 1999

Bala Baral & Ors.

: Petitioner

-Versus-

Saroj Kumar Swain & Ors.

: Opposite Parties

For Petitioner

: M/s. N.C. Pati,
S. Mishra,
S. Tripathy

For Opposite Party No.1

: None

For Opposite Party Nos.2 to 4

: Mr. S.P. Panda,
Addl. Govt. Adv.

WITH

In O.J.C No.14570 of 1999

Bala Baral & Ors.

: Petitioner

-Versus-

Balamukunda Swain & Anr.

: Opposite Parties

For Petitioner

: M/s. N.C. Pati,
S. Mishra,
S. Tripathy

For Opposite Party No.1

: None

For Opposite Party Nos.2 to 4

: Mr. S.P. Panda,
Addl. Govt. Adv.

WITH

In O.J.C No.14571 of 1999

Banamali Bhoi

: Petitioner

-Versus-

Balamukunda Swain & Ors.

: Opposite Parties

For Petitioner

: M/s. N.C. Pati,
S. Mishra,
S. Tripathy

For Opposite Party No.1

: None

For Opposite Party Nos.2 to 4

: Mr. S.P. Panda,
Addl. Govt. Adv.

J U D G M E N T

**CORAM :
JUSTICE BISWANATH RATH**

Date of hearing & judgment : 08.03.2022

1. Since all these writ petitions involve a common issue, this Court entering into common argument with consent of parties involved, takes up the O.J.C. No.14572 of 1999 as the main case and disposes of all the writ petitions by the following order:-

2. The writ petition bearing O.J.C. No.14572 of 1999 involves a challenge to the order of the revisional authority vide Annexure-3 in exercise of power U/s.36(I) of the O.C.H. & P.F.L. Act, 1972. All the writ petitions are decided analogously for involving a challenge to common revisional order vide Annexure-3 therein.

3. Background involved in this case is that the Petitioner in O.J.C. No.14572 of 1999 herein filed Consolidation Revision Case No.1881 of 1993 before the learned Commissioner Consolidation for recording his name on the basis of a sale deed existing involving the disputed land and similarly other purchasers in respect of the other land also filed revision case nos.1880/1882 & 1883 of 1993 also praying therein to record their names in respect of their purchased land. The learned Commissioner upon hearing all the parties remanded all the aforesaid cases by a common order to the original authority for undertaking appropriate exercise. This writ petition presently involves one such case registered as R.R.P. No.1882/93 initiated U/s.37(2) of the O.C.H. & P.F.L. Act, which appears to have been heard alongwith R.R.P. Nos.1881/93, 1880/93, 1883/93 and 1884/93 involving other writ petitions and decided

analogously. From the order dated 13.07.1994 at Annexure-1 this Court finds, in Revision Petition No.1881/93 the objector-Petitioner claimed for recording of Ac.0.25 dec. of land i.e. part of Ac.0.24 dec. of land from plot no.87, claimed to have been purchased on the basis of the R.S.D. No.152 dt.15.1.1985. The Opposite Parties entering into such application challenged the claim of the Petitioner for change in the recording on the basis of the sale deed on the premises that since the sale deed did not involve passing of consideration money, the same remains void and as a consequence claim of the Petitioner has no foundation. This was also the case involved in all such proceedings involved herein.

Considering the rival contentions of the parties and taking note of existence of sale deed, the Original Authority answering on the objection of the Opposite Parties therein to the objection cases involved vide common disposal, came to observe that in the existence of the sale deed particularly a registered sale deed passing of consideration money or not cannot be a issue in a consolidation proceeding and thus relying on a decision of this Court reported in AIR 1986 Orissa 196 particularly keeping in view the direction in paragraph no.9 therein came to allow the objection cases thereby giving direction for change in the record of rights in favour of each of the Petitioners involved herein. In the same order consequently allowed all objection cases bearing Nos.1881/1880/1883 & 1884 of 1993 involving separate piece of land also involving separate registered sale deeds. The Opposite Parties to the objection cases being aggrieved with the said order filed four sets of appeal vide Miscellaneous Appeal Case No.13/14/15/16 of 1994. It is needless to indicate here that one party being aggrieved by the orders filed, however, one appeal involving his both cases. All these appeals appear to have been finally adjudicated by the order vide Annexure-2 and while dismissing all the

appeals, the appellate authority confirmed the order of the original authority resulting filing of the Revision Petition Nos.92/97 to 96/97 on the file of the learned Commissioner Consolidation, Bhubaneswar. It is alleged that in disposing these revisions the revisional authority while failing to appreciate the judgment of the Hon'ble Court applicable to the case and taken note by the original authority, applied a Full Bench decision of this Court in AIR 1993 (ORI.) 1 wrongly and came to allow the revision petitions thereby reversing the orders of the authorities below.

4. It is taking this Court to the reasons in allowing the revisions the Petitioner being aggrieved by the revisional order i.e. the initiator of the objection cases filing the present batch of writ petitions submitted that the decision arrived by the revisional authority involved wrong application of a Full Bench judgment, further also in complete ignorance of a judgment of this Court rather settling the position of law in favour of the Petitioner through AIR 1986 Orissa 196.

In the premises, learned counsel for Petitioner for having same question of law in all the cases prayed this Court for interfering in the revisional order and setting aside the same thereby confirming the order of the original authority also being confirmed by the appellate authority. Learned counsel for Petitioner in the process also took this Court to both the decisions vide AIR 1993 (Ori.) 1 and AIR 1986 Orissa 196 and attempted to justify his claim.

5. Learned State Counsel in his attempt to justify the impugned order i.e. the order of revisional authority involving five revision petitions, taking this Court to the findings of the revisional authority submitted that there is no wrong in applying the provision at Section 54 of the T.P. Act

to the case at hand and looking to the controversy involved herein there is, however, no dispute at Bar that the decision reported in AIR 1993 (ORI.) 1 involves a question of “Benami transaction” and whether the Consolidation Authority undertaking such exercise has the jurisdiction to enter into such question or not? There is also no dispute at Bar that the decision at AIR 1986 Orissa 196 and referred to by the original authority rather has direct application to the case at hand.

6. Keeping in view the rival contentions of the parties, this Court finds, the moot question remains here to be decided by this Court is, for an objection being raised by the Opposite Parties involving the objection cases regarding refusal of acceptance of sale deeds for non-disclosure of passing of consideration money, if the same could not have been taken into account by the original authority and further would have been ignored by the revisional authority?, Further in the circumstance if the Full Bench decision of this Court vide AIR 1993 (ORI.) 1 has any application to the case at hand or not?

7. Proceeding to the factual background involving disposal of the original batch of cases and the appeals, this Court finds, keeping in view the controversies indicated hereinabove the Original Authority taking into account the question raised above vis-à-vis as well as the decision vide AIR 1986 Orissa 196 came to allow the objection cases finding support to the claim of the Objectors through materials on record and support of law through the above judgment. This Court here considering the applicability of such decision keeping in mind that there in fact no disclosure on the passing of consideration money involving the sale deeds, finds from the paragraph no.9 in AIR 1986 Orissa 196 a single Bench of this Court in similar situation has come to observe as follows :

“The only other question which survives for consideration is whether under Ext.2, the title passes even though the consideration has not passed. It is settled law that if the term in the sale deed is not ambiguous then any external aid to find out the true intention of the parties cannot be availed of and the narration in the document would be the sole determining feature. See *Ramchandra Biharirilal Firm v. Mathuramohan Naik*, AIR 1964 Orissa 239 and *Gurubari Lenka v. Dulani Thakurani*, AIR 1971 Orissa 147. I have examined the document (Ext.2) at great length and am of the opinion that the terms of the document are clear and unambiguous and, therefore, the intention has to be gathered only from the terms of the said document. Under Sec. 54 of the Transfer of Property Act, title passes upon execution and registration of the sale deed and the provisions of Sec. 54 contemplate that there can be a valid sale even for a deferred consideration. The English translation of the material portion of Ext.2 regarding passing of title and receiving of consideration is as follows:-

“I, the vendor being in possession of the property scheduled below having sold you the said property for a consideration of Rs.555/- and having agreed to receive the consideration money at the time of endorsement on the registration ticket, am executing this deed to the effect that from today you, the vendees, and your successors-in-interest would enjoy the property as owners in possession thereof and would get your names mutated in the revenue papers.”

The aforesaid terms unequivocally indicates that the title under the deed would pass on the date of execution of the deed and would not depend upon passing of consideration and, therefore, defendants 1 and 2 became the owners-in-possession of the land in question on execution of the sale deed (Ext.2). The conclusion of the lower appellate court on this score also must be set aside and the finding of the trial court is affirmed.”

8. Reading the aforesaid judgment this Court finds, the judgment was passed again taking into account several other judgments of this Court in same line and also considering the situation arises here also came to observe, on entering into the sale deed with the particular terms therein, title under such deed would have been passed on the date of execution of the deed itself and the same has nothing to do with passing of consideration money or not.

9. It is, at this stage of the matter, this Court also examining the judgment applied by the revisional authority in AIR 1993 (ORI.) 1 and from paragraph no.1 therein finds, the Full Bench was undertaking exercise to a question raised to be considered by the Bench of the same Court and in first paragraph of the judgment itself the Full Bench has come to record the question required to be decided by the Full Bench, which reads as follows :

“This reference to the Full Bench has been made by a learned single Judge to decide whether the view expressed principally in *Kailash Chandra Sahu v. Mahani Charan Mohanty*, (1988) 62 CLT 261, by a learned single Judge of this Court which was approved by a Division Bench of this Court in *Ramachandra v. Suresh Chandra*, 1988 (1) OLR 185, that consolidation authorities have no jurisdiction to decide a question relating to benami nature of transaction is correct or not.”

10. Reading the questions referred to by the Full Bench, this Court finds, there should not be any doubt that the question referred to by the Full Bench was; if the Consolidation Authorities have any jurisdiction to decide the question relating to “Benami Transaction” and the Full Bench in answering such question has come to observe that the Consolidation Authorities have the jurisdiction to decide the question, whether the

dispute between the parties is relatable to a “Benami Transaction” as well sam transaction or not?

In the circumstance, this Court finds, the Full Bench judgment referred to therein by the revisional Court became the foundation to come to such conclusion in allowing the revision and the same is absolutely not applicable to the case at hand. On the other hand looking to the nature of the dispute involved and the decision taken care of by the Original Authority vide AIR 1986 Orissa 196, this Court finds, such decision has direct application to the case at hand and has been rightly appreciated by the Original Authority and being confirmed by the Appellate Authority. On the other hand, for the wrong application of the decision by the revisional authority becoming the reason in reversing the original order, this Court finds, the order in Annexure-3 is not sustainable in the eye of law and as a consequence this Court sets aside the order passed in the Revision Case Nos.92/97 to 96/97.

11. All these writ petitions succeed. The Competent Authority is directed to follow the direction of the original authority at Annexure-1 and prepare the record of rights accordingly, if not prepared in the meantime, at least within a period of one month from the date of service of a copy of the judgment of this Court.

In the circumstance, there is no order as to cost.

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(Biswanath Rath)
Judge

Orissa High Court, Cuttack.
 The 08th day of March, 2022//
 Ayaskanta Jena,
 Senior Stenographer