

IN THE HIGH COURT OF ORISSA AT CUTTACK

O.J.C. No.13974 of 1997

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

Jagannath Swain & Ors. ...

Petitioner(s)

Versus

Padmanav Swain & Ors. ...

Opposite Parties

For Petitioner ...

M/s..B.H.Mohanty,R.K.Nayak,
T.K.Mohanty, B.Das, P.Sahoo,
D.P.Mohanty, J.K.Bastia &
S.C.Mohanty

For Opposite Parties ...

Mr. S.Behera, (O.P.No.3) ,
M/s. C.R.Swain, M.S.Sahoo,
B.Mishra, S.B.Sahoo & S.N.Das.
(O.P.Nos.2(a) to 2 (e))
M/s. K.K.Jena & A.K.Mohapatra
(O.P.No.1(a))

J U D G M E N T

PRESENT:

THE HONOURABLE JUSTICE BISWANATH RATH

Date of Hearing and Judgment: 13.09.2022

Biswanath Rath, J. This writ petition involves a challenge to the revisional order at Annexure-7. Background involving the case is that in the proceeding under Section 9 of the OCH & PFL Act,1972, objection stage, the matter went against these petitioners but in appeal, the order of the original authority got reversed. Revision being preferred by private opposite parties herein,

revisional authority appears to have allowed the revision in setting aside of the appeal order at Annexure-6. Sole ground attacking the revisional order appears to be even assuming that there is a decree in favour of the private opposite parties in respect of a sale deed, and such a decree exist, unless such decree is executed, title never passed to the party involved.

2. In spite of notice and appearance of a set of counsel for the contesting opposite parties, nobody is appearing here to contest the matter. Considering the legal aspect involved herein, this Court looking to the findings of the revisional authority solely based on the following observation:

“ Evidently the decree in the title appeal has become final inter parties and it be interpreted by the Consolidation Authority so that its *(illegible)* is not taken away. Through such a decree the title of the disputed plot has passed to the father of the petitioners along with other plots irrespective of whether the registered sale deed has been executed or not.”

3. Reading from the above and keeping in view the question raised, this Court is of opinion while passing of judgment and decree in favour of a party with clear observation of the disputed land still lying with the judgment and decree, unless the decree put to execution, there is no passing of title.

4. In the circumstance, this Court finds the ground on which the revision has been allowed remain contrary to legal position. As a consequence, this Court interfering in the impugned order at zannexure-7, sets aside the same and directs restoration of the appeal order at Anexure-6.

5. In the result the writ petition succeeds. No cost.

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Biswanath Rath, J.