

IN THE HIGH COURT OF ORISSA AT CUTTACK

WP(C) NO.7020 OF 2004

Srima Kumari Seth & anr.

....

Petitioners

Mr.A.P.Bose, Adv.

-versus-

***Joint Commissioner, Settlement and
Consolidation, Sambalpur & ors.***

....

Opposite Party(s)

Mr.S.P.Panda, AGA

**CORAM:
JUSTICE BISWANATH RATH**

**ORDER
23.9.2022**

Order No.

04.

1. Heard learned counsel for the Parties.
2. Short background involving the case, in the first instance, there was initiation of a 37(1) of OCH & PFL Act proceeding registered as Consolidation Revision Case No.151/1995. The Present Petitioners appear to be in position of O.Ps.6 & 7 therein. This Revision being allowed, however, the matter was remitted to the stage of Section 9(3) of the OCH & PFL Act, as appearing from the narrative of the order at Page-5 of Paragraph-6 of the Writ Petition. The matter appears to have involved an open remand deciding the dispute therein with sufficient opportunity to the interested Parties. The Remand Revision appears to have been disposed by the Consolidation Officer, Bargarh with a negative order, vide

Annexure-1. It appears, in the Appeal, vide Annexure-2, presumably under Section 12 of the OCH & PFL Act, 1972, in course of hearing, an application was brought under the provision of Order 41 Rule 27 of C.P.C making an attempt to bring further material for considering the share of the Parties as the sole dispute involved in the original proceeding even mostly allotment of share. The Appellate Authority in deciding the matter, vide Annexure-2 rejected taking into account the attempt through Order 41 Rule 27 of C.P.C. thereby disallowed the Appeal in confirmation of the order of the Consolidation Officer in Remand Revision Case No.151/95. A Revision being preferred by the original Revision Petitioner along with one Durga Seth, who was also appearing in the previous round of Revision as one of the O.Ps. The Revisional Court taking into account the material through the Application under Order 41 Rule 27 of C.P.C. appears allowed the Revision partly thereby setting aside the orders of the Original Authority as well as Appellate Authority thereby while allowing partly remitted the matter to the Consolidation Officer for re-consideration on the aspect indicated therein, particularly to examine the matter under its legal pursuit on the aspect of adoption.

3. Learned counsel for the Petitioner raising serious objection in the manner of disposal of the Revision again involving a new

cause brought through the Application under Order 41 Rule 27 of C.P.C. contended that in the event there was requirement of taking into account the pleadings through Order 41 Rule 27 of C.P.C. Application, then opportunity of contest to such contention should have been provided to the O.Ps. therein. For the disputed nature of claim involving the Order 41 Rule 27 of C.P.C. Application involved, Mr.Bose contended in no circumstance the Revisional Authority could have decided the matter in part and remitted for limited purpose.

4. There was no dispute to such contention in Bar by the Counsel by other O.Ps. as well as the State Counsel.

5. In the above background of the case, this Court is of the opinion that once further material comes creating some sort of impediment in partition of the property involved herein, in the interest of justice, even assuming the Revisional Authority finds a ray of hope through such Application, the matter should have been remitted to the Consolidation Officer for action involving such issue and after providing reasonable opportunity to all contestants for re-adjudication of the entire issue involved therein. Decision in piece meal manner is found to be against law.

6. In the circumstance, this Court interfering with the revisional order insofar as allowing a part of the order and remands the matter for consideration of the whole issue along with the issue raised through Order 41 Rule 27 of C.P.C. Application. Since there is already an Application under Order 41 Rule 27 of C.P.C., it may be open to the contesting O.ps. to raise their objections and if such issue is taken into consideration, Parties will have also their opportunity to lead evidence. The Remand Proceeding will be treated as open remand requiring fresh order in the light of the direction herein. Parties are directed to appear before the Consolidation Officer, Bargarh along with a copy of this order on 12.10.2022 to take the date of further proceeding and the matter will be re-adjudicated by the Consolidation Officer at least within a period of four months from the date of appearance of the Parties.

7. With the above order, the Writ Petition stands disposed of.

(Biswanath Rath)
Judge

M.K.Rout