

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No. 2680 OF 2015

Mohan Sahu and others

Petitioners

Mr. Soumya Mishra, Advocate

-versus-

***Additional Commissioner,
Consolidation and Settlement,
Sambalpur and others***

.... Opp. Parties

Mr. Sarojananda Mishra,
Additional Government Advocate
(For Opp. Party Nos.1 to 3)

Mr. Baibaswata Panigrahi, Advocate
(For Opp. Party No.4)

**CORAM:
JUSTICE K.R. MOHAPATRA**

**ORDER
02.05.2022**

Order No.

- 20.
1. This matter is taken up through hybrid mode.
 2. Although this matter was listed for consideration of Misc. Case No. 11141 of 2016, but while taking up the interim application, merit of the writ petition was required to be gone into. Hence, this Court vide order dated 31st March, 2022 requested learned counsel for the parties to come ready for final disposal of the writ petition. As such, on consent of learned counsel for the parties, the matter is taken up for final disposal.
 3. The Petitioners in this writ petition seek to assail the order dated 25th July, 2014 (Annexure-11) passed in Consolidation Revision No.484 of 1988, whereby the Additional Commissioner of Consolidation and Settlement, Sambalpur dismissed the revision filed by their predecessor, namely, Bighna Sahu under Section 36 of the Orissa Consolidation of Holdings and Prevention of Fragmentation of Land Act, 1972 (for convenience referred to as, 'the Act').

4. Mr. Mishra, learned counsel for the Petitioners submits that Brusabha Sahu was the recorded tenant in respect of the land in question. Said Brusabha Sahu along with his son, Bighna Sahu by virtue of Registered Sale Deed No.7453 of 1964 sold the land in question to Opposite Party No.4-Satlama High School through the Headmaster-cum-Secretary. During consolidation operation, the Opposite Party No.4 filed Objection Case No.1279 of 1982 before the Consolidation Authority to record the land in question in its name on the basis of Registered Sale Deed No.7453 of 1964. Bighna Sahu, the father of the Petitioners also filed Objection Case No.1339 of 1982 to record the land in his name on the ground that the deed in question was a deed of exchange and not a sale deed and the said deed was never acted upon. Thus, he claimed to record the land in question on the basis of the order passed in OLR Case No.424 of 1976. Both the objection cases were heard and the Consolidation Officer allowed Objection Case No.1279 of 1982 filed by Opposite Party No.4. Assailing the same, Bighna Sahu preferred Consolidation Appeal No. 12 of 1984, which was dismissed by the Deputy Director, Consolidation, Bargarh vide order dated 31st March, 1983. Accordingly, Bighna Sahu filed Consolidation Revision No.1185 of 1984. The said revision petition was allowed vide order dated 9th February, 1999 by the Joint Commissioner, Consolidation, Sambalpur directing to record the land in favour of said Bighna Sahu. Being aggrieved, the Opposite Party No.4-Satlama High School through Headmaster-cum-Secretary preferred O.J.C. No.7375 of 1999, which was disposed of by this Court vide order dated 12th December, 2008 (Annexure-10) setting aside the order passed by the

Joint Commissioner, Consolidation, Sambalpur and remitted the matter back to the Joint Commissioner, Consolidation, Sambalpur for *de novo* disposal of Consolidation Revision No. 1185 of 1984 granting liberty to the parties to file further documents in support of their case. After remand, the revision case was transferred to the court of Additional Commissioner of Consolidation and Settlement, Sambalpur and re-numbered as Consolidation Revision No.484 of 1988. Accordingly, the Additional Commissioner took up the revision case and passed the impugned order under Annexure-11.

5. Mr. Mishra, learned counsel for the Petitioners submits that the claim of Opposite Party No.4 is based on the Registered Sale Deed dated 9th October, 1964. Assailing the validity of the sale deed, said Bighna Sahu had filed Title Suit No.24 of 1985 before learned Munsif, Bargarh, which was dismissed for non-prosecution on 3rd February, 1986 due to non-appearance of both the parties. Thus, dismissal of the suit is squarely covered under Order IX Rule 3 C.P.C. As such, the Petitioners have liberty to file a fresh suit assailing the validity of the sale deed. In fact, the Petitioners have already filed Civil Suit No.149 of 2016, which is sub-judice before learned Civil Judge (Senior Division), Bargarh. It is his contention that in view of the provision under Order IX Rule 3 C.P.C., there is no decree in the eyes of law with regard to validity of the Registered Sale Deed in question. However, the Additional Commissioner without appreciating the same proceeded on a misconception that the Registered Sale Deed has been held to be valid by a competent Civil Court. He further submits that the land was agricultural in nature and was recorded in the name of Brusabha Sahu under *Sikimi* status.

Thus, the execution of Registered Sale Deed is without any authority and is void *ab initio*. Relying upon the decision in the case of ***Ratnamanjari Swain -v- Ritanjali Pattanaik and another***, reported in 2012 (I) ILR-CUT- 390, Mr. Mishra, learned counsel submits that this Court relying upon the decision in the case of ***Gorakh Nath Dube -v- Hari Narain Singh and others***, reported in AIR 1973 SC 2451, came to hold that the alienation by a person without any authority is void and not voidable. Therefore, the Consolidation Authorities would be deemed to be invested with the jurisdiction to adjudicate the matter. Thus, dismissal of the suit for non-prosecution does not have a binding effect on the Additional Commissioner. These material aspects were not taken into consideration by the Additional Commissioner while adjudicating the matter. Hence, he prays for setting aside the impugned order under Annexure-11 and to remit the matter back to the Additional Commissioner of Consolidation and Settlement, Sambalpur for fresh adjudication of the revision petition in accordance with law.

6. Mr. Panigrahi, learned counsel for the Opposite Party No.4 refuting such submission contended that the plea taken in this writ petition though available to the Petitioners was not raised before the revisional court. Thus, the same cannot be taken into consideration in this writ petition. It is further contended that there is no material on record to show that the Defendant was also absent on the date when Title Suit No.24 of 1985 was dismissed for non-prosecution. Thus, the order of dismissal of the suit is under Order IX Rule 3 C.P.C. On the other hand, the provision under Order IX Rule 9 C.P.C. has application to the instant case and no fresh civil suit on the self-same

cause of action is maintainable. He further submits that the transaction in question was by virtue of a Registered Sale Deed and the presumption of validity is attached to it unless the same is declared to be void by competent Court of law. A Government High School has been established over the land in question. Hence, the writ petition being devoid of any merit is liable to be dismissed.

7. Mr. Mishra, learned Additional Government Advocate supports the case of the Opposite Party No.4 and submits that the impugned order under Annexure-11 is a reasoned one and warrants no interference.

8. Heard learned counsel for the parties and perused the materials on record.

9. On perusal of the order passed in OJC No.7375 of 1999 under Annexure-10, it reveals that the Petitioners have challenged the sale deed on the ground that the deed in question was a deed of exchange and not a sale deed, which was never acted upon. This Court while adjudicating the earlier writ petition though had taken note of pendency of the suit (T.S. No. 24 Of 1985), but did not record any finding on the same as the parties to the writ petition could not produce any material with regard to the decree/order passed in the civil suit. Hence, this Court remitted the matter back to the revisional Court for fresh adjudication of the revision petition granting liberty to the parties to produce further materials in support of their case. Mr. Mishra, learned counsel for the Petitioners submitted that the plea that the land in question was agricultural land and it was recorded in the name of said Brusabha Sahu under *Sikimi* status was raised by Bighna Sahu before the Consolidation Officer in Objection Case

No. 1339 of 1982, as he claimed to record the land in question on the basis of order passed in OLR Case No. 424 of 1976. In order to test the veracity of such submission, this Court went through order dated 1st January, 1982 (Annexure-2 series) passed in OLR Case No. 424 of 1976, which clearly speaks that the land in question was recorded under *Sikimi* khata in the name of Brusabha. But, it was subsequently taken to raiyati khata. Thus, the plea of Mr. Mishra, learned counsel for the Petitioners is not sustainable. Further, the Consolidation Officer considering the same rejected the Objection Case No. 1339 of 1982 filed by Bighna. Probably, for that reason neither Bighna nor the Petitioners raised such plea in all subsequent stages. Further, such plea was neither raised in the revision nor in the earlier writ petition (OJC No. 7375 of 1999) although the same was available to be raised. That being a mixed question of fact and law is no more available to be raised in this writ petition. Further, the Petitioners all through have raised the plea that no sale deed was executed in favour of Opposite Party No.4-Satlama High School. The same was a deed of exchange, which was never acted upon. It also reveals from the record that the Petitioners had filed Title Suit No.24 of 1985, which was dismissed for non-prosecution on 3rd February, 1986. There is no material on record to come to a conclusion that the said order was passed under Order IX Rule 3 C.P.C. On perusal of the impugned order under Annexure-11, it reveals that the revisional court has meticulously went through the materials on record and has rightly come to the conclusion that since the RSD in question has been executed by the recorded tenants, Brusabha and his son, Bighna, it cannot be held to be void. There is also no allegation that it was

obtained fraudulently. In view of Section 54 of the Transfer of Property Act, the same is valid one unless it is held otherwise by a competent court of law. Hence, the ratio in the case of *Ratnamanjari* (supra) has no application to this case. In addition to the above, T.S. No. 24 of 1985 filed to declare the said deed as void has been dismissed for non-prosecution vide order dated 3rd February, 1986. However, Mr. Mishra, learned counsel for the Petitioners submits that Civil Suit No. 149 of 2016 is pending before learned Civil Judge (Senior Division), Bargarh for adjudication in which the validity of the sale deed is in question.

10. Since learned counsel for the Petitioners submits that Civil Suit No.149 of 2016 challenging the validity of the Registered Sale Deed is still pending before learned Senior Civil Judge, Bargarh, the validity of the transaction in question shall be decided in the said suit. As such, I don't feel it proper to make any observation on the same.

11. In view of the discussion made above, I am not inclined to interfere with the impugned order under Annexure-11. Accordingly, the writ petition is disposed of with an observation that the impugned order passed under Annexure-11 shall be abided by the decision of Civil Suit No.149 of 2016 pending before learned Senior Civil Judge, Bargarh.

12. The interim order dated 30th March, 2015 passed in Misc. Case No.2797 of 2015 stands vacated.

Urgent certified copy of this order be granted on proper application.

(K.R. Mohapatra)
Judge

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