

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No. 2730 OF 2018

Chare Oram

Petitioner

Mr. Gautam Mukherji, Senior Advocate
being assisted by Mr. A.C. Panda, Advocate

-versus-

The Tahasildar, Bisra and others

.... Opp. Parties

Mr. Sarojananda Mishra,
Additional Government Advocate
(For Opp. Party Nos.1 and 2)
Mr. Soumya Mishra, Advocate
(For Opp. Party Nos.3 to 5)

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

**ORDER
25.04.2022**

Order No.

9. 1. This matter is taken up through hybrid mode.
2. The Petitioner in this writ petition seeks to assail the order dated 3rd January, 2018 (Annexure-2 series) passed in Revenue Misc. Case No.5 of 2017, whereby the Tahasildar, Bisra in exercise of power under Section 3(1) of the Orissa Scheduled Areas Transfer of Immovable Property (By Scheduled Tribes) Regulation, 1956 (for short 'the Regulation'), granted Land Holding Certificate in favour of Opposite Party No.3 (being dead substituted by his legal heirs).
3. Mr. Mukherji, learned Senior Advocate appearing for the Petitioner submits that the land in question was the subject matter of dispute in Title Suit No.62 of 1988, wherein learned Civil Judge (Senior Division), Rourkela vide judgment dated 13th May, 1994 decreed the suit preliminarily in respect of suit schedule land situated in village Jamsera under Khata No.17 measuring an area of Ac.12.61 decimals, granting 1/3rd share to the Petitioner and dismissed the suit in respect of the properties situated in village Jagada. Assailing the

same, the present Petitioner preferred Title Appeal No. 3 of 1994. Learned Additional District Judge, Rourkela vide order dated 19th July, 2005 set aside the judgment and decree of dismissal in respect of the properties situated in village Jagada and decreed the suit for partition of the entire suit properties in respect of village Jamsera and Jagada. Being aggrieved, the Opposite Party No.3 preferred RSA No.576 of 2005, which was disposed of vide judgment dated 23rd August, 2017 holding as under:

“Thus, in my considered view said question ought not to have been decided at that stage. Therefore, the preliminary decree in respect of lands in village Jagada as passed in the first appeal cannot sustain.

As per above discussion, when on the available materials on record, it is found that the relief of partition in respect of Jagada lands could not have been allowed in the absence of those purchasers being parties who are not bound by the findings on factual aspects; and other detail and relevant particulars; in view of long lapse of time, instead of remanding the suit to the trial court for decision afresh after providing opportunity to the purchasers as well as parties, this Court feels inclined to put at rest, the preliminary decree as passed by the trial court in respect of Jamsera property by granting liberty to the plaintiff for pursuing the remedy in respect of their claim of partition of Jagada property in a properly constituted legal proceeding seeking a second preliminary decree.

The aforesaid discussion and reasons, accordingly provide answers to the substantial question of law.

The appeal stands accordingly allowed by setting aside the judgment and preliminary decree passed by the lower appellate court in so far as the properties of mouza Jagada as described in Schedule-II of the plaint is concerned with the observation as made above.”

Thus, this Court while disposing of the second appeal granted liberty to the parties to work out their remedy in respect of properties

situated in village Jagada by filing a properly constituted legal proceeding seeking a second preliminary decree.

4. It is the submission of Mr. Mukherji, learned Senior Advocate that in spite of the observation and direction made by this Court, the Opposite Party No.3 without impleading the present Petitioner as party has initiated a proceeding under Section 3(1) of the Regulation for grant of Land Holding Certificate (LHC) in his favour in respect of the property situated in village Jagada. The Tahasildar, Bisra without considering the matter from its proper prospective and without serving any notice on the Petitioner granted Land Holding Certificate in favour of Opposite Party No.3 vide his order dated 3rd January, 2018 (Annexure-2 series), which is under challenge in this writ petition.

5. It is his submissions that pursuant to the Land Holding Certificate, the Opposite Party No.3 and his legal heirs have sold away a substantial portion of property situated in village Jagada. He further submits that pursuant to the leave granted by this Court, the Petitioner has already filed Civil Suit No.134 of 2018 before learned Civil Judge (Senior Division), Rourkela for a preliminary decree in respect of immovable properties situated in village Jagada. The legal heirs of Opposite Party No.3 and subsequent purchasers including other co-sharers have been impleaded as parties to the said civil suit. In the event the impugned order is allowed to stand, the Petitioner may not get any property situated in village Jagada, even he succeeds in the suit. Hence, he prays for setting aside the impugned order under Annexure-2 series being violative of the principles of natural justice and non-consideration of the material facts.

6. Mr. Mishra, learned counsel for the legal heirs of Opposite Party No.3 submits that the Land Holding Certificate was granted on the basis of the R.O.R. published. It is only granted to show the immovable property held by the land holder in order to enable him to alienate his property in accordance with law. Although R.S.A. No.576 of 2015 was disposed of by this Court on 23rd August, 2017, but the suit was not filed for a considerable period. The Opposite Party No.3 received the summons in the said suit on 17th April, 2019 and his legal heirs are diligently contesting the suit. By the date the Opposite Party No.3 received the notice in the suit, the impugned order had already been passed. The impugned order under Section 3(1) of the Regulation was passed for a limited purpose and will not affect the interest of the parties in the suit. As such, the impugned order warrants no interference. Hence, he prays for dismissal of the writ petition.

7. Mr. Mishra, learned Additional Government Advocate, on the other hand, submits that since the Petitioner has a remedy under Section 3(3) of the Regulation to file an appeal against the order impugned herein, the writ petition is not maintainable.

8. Taking into consideration the rival contentions of the parties, one aspect is clear that proceeding in Revenue Misc. Case No.5 of 2017 was initiated without impleading the present Petitioner as a party although he is in litigating term with Opposite Party No.3 since 1988, when Title Suit No.62 of 1998 was filed. It is further clear that the Petitioner was not given an opportunity of hearing in the said proceeding under Section 3(1) of the Regulation.

9. This Court while setting aside the decree in respect of partition of immovable properties situated in village Jagada granted

liberty to the parties to work out their remedy by filing a properly constituted proceeding seeking for a second preliminary decree. The Opposite Party No.3 being well-aware of such legal position filed a petition under Section 3(1) of the Regulation without even impleading the Petitioner as a party. Thus, the proceeding in Revenue Misc. Case No.05 of 2017 is vitiated for non-compliance of principles of natural justice.

10. True it is that the order under Annexure-2, which is impugned herein, is appealable one under Section 3(3) of the Regulation but in view of the fact that this Court, vide order dated 14th March, 2018 taking into consideration the materials available on record, issued notice and as an interim measure, directed that the parties to maintain *status quo* in respect of the disputed properties (properties at Jagada), I am not inclined to relegate the parties to seek their remedy under the provisions of the Regulation, more particularly when a civil suit has already been filed for partition. No fruitful purpose will also be served by relegating the Petitioner to file an appeal.

11. In the meantime, pursuant to the order under Annexure-2, the Opposite Party No.3 and his legal heirs have sold away certain properties at Jagada and the purchasers are, however, made parties to Civil Suit No.62 of 2018 pending before learned Civil Judge (Senior Division), Rourkela. In that view of the matter, this Court feels it proper to entertain this writ petition even though a statutory remedy is available to the Petitioner.

12. Since the issue of partition of the property situated in mouza Jagada is still sub-judice in Civil Suit No.134 of 2018 and in view of the observation made by this Court in the preceding paragraph to the effect that the proceedings in Revenue Misc. Case No.05 of 2017 is

vitiated, this Court directs that the Land Holding Certificate issued in favour of Opposite Party No.3 pursuant to the impugned order dated 3th January, 1998 passed in Revenue Misc. Case No.05 of 2017 shall be kept in abeyance till disposal of the suit, which shall be subject to the outcome of the said Civil Suit.

13. In the facts and circumstances of the case, interest of justice will be best served, if Civil Suit No.134 of 2018 is disposed of at an early date. Parties are directed to cooperate with the learned trial Court for early disposal of said civil suit. It is made clear that unnecessary adjournment shall not be granted to any of the parties to the suit.

14. The writ petition is disposed of accordingly.

15. Case record of RSA No.576 of 2005 shall be sent back to the concerned Section forthwith.

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

संस्थानिक न्यायाधीश

(K.R. Mohapatra)

Judge

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