

IN THE HIGH COURT OF ORISSA AT CUTTACK

S.A.O No.16 of 2013

In the matter of an appeal under Section-43 Rule (1)U of C.P.C.

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**Principal, Kendrapara
College, Kendrapara**

....

Appellant

-versus-

Saroj Kumar Rout

....

Respondent

For Petitioner : M/s. P.C.Acharya.

For Opp. Parties : M/s. B.Mohanty,
D.P.Mohanty,R.K.Nayak,
M.Pal, T.K.Mohanty &
P.K.Swain

PRESENT:

THE HONBLE JUSTICE BIRAJA PRASANNA SATAPATHY

Date of Hearing: 04.11.2022 and Date of Judgment:14.11.2022

Biraja Prasanna Satapathy, J.

1. This matter is taken up through Hybrid Mode.
2. Heard Mr. P.C.Acharya, learned counsel for the Appellant and Mr. D.P. Mohanty, learned counsel for the Respondent.
3. This appeal has been filed challenging the judgment dated 29.11.2013 passed by the learned District Judge, Kendrapara in R.F.A No.15/2011.

4. Learned counsel for the Appellant submitted that the respondent herein filed Civil Suit No.178/2007 before the learned Civil Judge, (Senior Division), Kendrapara for decree of permanent injunction against the present appellant.

5. It is contended that learned Trial Court after going through the rival submissions and the dispute with regard to the title of the suit schedule property dismissed the suit vide its judgment dated 15.04.2011 and decree dated 21.04.2011.

6. It is the specific finding of the learned Trial Court that due to the dispute with regard to the title of the suit property, in absence of any declaration of right, title, interest of the suit property, no order of injunction can be passed and accordingly while holding so the suit was dismissed vide the judgment and decree as indicated hereinabove.

7. Learned counsel for the Appellant further submitted that challenging such judgment and decree passed in C.S. No.178 of 2007, the present respondent filed RFA No.15/2011. But it is submitted that during pendency of the suit before the learned Trial Court, the appellant herein taking into account the fact that the consolidation operation in the area in question being in progress, filed R.P. No.121/2007 before the Director Consolidation, Orissa under Section 37(2) of the O.C.H. & P.F.L. Act. Learned Director when vide its order dated 14.09.2009 remanded the matter to the Consolidation Officer, Kendrapara for disposal in accordance with law, the said order was

challenged by the respondent before this Court in W.P.(C) No.15948 of 2009. This Court vide order dated 06.08.2013 dismissed the said writ petition by confirming the order of remand passed in R.P. No.121 of 2007. It is accordingly submitted that since the issue with regard to the title of the suit property is pending adjudication before the Consolidation Authority, the impugned judgment and decree passed by the learned First Appellate Court in RFA No.15/2011 needs interference of this Court. It is also contended that the First Appellate Court while remanding the matter illegally allowed the prayer of the respondent for amending the prayer as made in the suit and to insert the prayer for declaration of right, title, interest in addition to the prayer for permanent injunction.

8. Mr. Acharya, learned counsel for the Appellant further submitted that since the declaration of right, title, interest of the suit property is pending consideration before the Consolidation Authority, in terms of the order passed by the learned Director, Consolidation, confirmed by this Court in W.P.(C) No.15948 of 2009, learned First Appellate Court on the face of such order, should not have allowed the prayer of the respondent to seek declaration of right, title, interest along with the prayer for permanent injunction. While remanding the matter vide the impugned judgment, it is also contended that the First Appellate Court while allowing such prayer for declaration of right, title, interest also left the learned Trial Court to deal with the amended prayer as per the provision contained under Section-4(4) of O.C.H. & P.F.L Act, 1972, if moved.

9. It is accordingly contended that since the issue with

regard to the right, title, interest of the suit property is pending before the Consolidation Authority, the Civil Court is not competent to take up the said issue in view of the bar contained under Section-4(4) of O.C.H. & P.F.L Act, 1972. But the learned First Appellate Court while indicating the said provision, not only allowed the respondent to raise the question of declaration of right, title, interest in addition to the prayer of permanent injunction while remanding the matter vide the impugned judgment and decree. But it is submitted that because of the interim order passed by this Court on 03.01.2014, learned Trial Court is not proceeding further in the matter after remand of the same.

10. Mr. Acharya, accordingly submitted that on the face of the order passed by the learned Director, Consolidation in R.P. Case No.121/2007, which has been confirmed by this Court in W.P.(C) No.15948 of 2009, learned First Appellate Court should not have allowed the respondent herein to raise the question of declaration of right, title, interest on the one hand while observing about the provision contained under Section-4(4) of the O.C.H. & P.F.L Act, 1972.

11. Mr. D.P. Mohanty, learned counsel for the Respondent on the other hand though supported the impugned judgment and decree passed by the learned First Appellate court, but did not dispute the order of remand passed by the Director, Consolidation in R.P. No.121 of 2007 and confirmation of the same by this Court in W.P.(C) No. 15948 of 2009.

12. Learned counsel for the Respondent also fairly

submitted that in view of the jurisdiction of the Consolidation Authority in deciding the issue with regard to right, title, interest of the suit property, the Civil Court in view of the provision contained under Section-4(4) of O.C.H. & P.F.L Act, 1972, is not competent to take up the said issue. However, it is contended that learned Civil Court is competent to decide the status with regard to the issue as to who is the real son of Sk. Janu Mohammad.

13. Heard learned counsel for the Parties. Perused the materials available on record. This Court after going through the same finds that the issue with regard to declaration of right, title, interest is admittedly pending consideration before the Consolidation, Authority in terms of the order passed by the learned Director, Consolidation in R.P No.121 of 2007. The said order passed by the learned Director has also been confirmed by this Court in its order dated 06.08.2013 passed in W.P.(C) No.15948 of 2009. Therefore, in view of the fact that the issue with regard to declaration of right, title, interest since is pending consideration before the Consolidation Authority, in view of the provision contained under Section-4(4) of the O.C.H. & P.F.L Act, 1972, the Civil Court has no authority/jurisdiction to take up the said issue. Therefore, the learned First Appellate Court on the face of such order passed by the Consolidation Authority should not have allowed the prayer by permitting the respondent to insert the prayer for declaration of right, title, interest in addition to the prayer of permanent injunction.

14. Therefore, this Court is inclined to quash that part

of the order of the learned First Appellate Court, wherein the respondent was permitted to insert the prayer for declaration of right, title & interest. This Court while quashing the same by holding so, only permit the learned Trial Court to decide the question of permanent injunction as prayed for by the respondent herein in C.S No.178/2007. This Court expresses no opinion with regard to the merits and contention of either of the parties on the question of injunction and the learned Trial Court is free to take its own view after giving due opportunity of hearing to both the parties.

15. With the aforesaid observations and directions, the S.A.O stands disposed of.

(Biraja Prasanna Satapathy)
Judge

Orissa High Court, Cuttack
Dated the 14th of November, 2022/Subrat (Sr.Steno)