

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.A. No. 118 of 2015

Maitun Bibi

....

Appellant

Mr. Omkar Panda, Advocate

-versus-

***The Commissioner, Consolidation
Settlement, Odisha, Bhubaneswar and
others***

....

Respondents

Mr. Debakanta Mohanty
Additional Government Advocate for State

CORAM:

**THE CHIEF JUSTICE
JUSTICE M.S. RAMAN**

**ORDER
31.10.2022**

Order No.

05.

1. The challenge in the present writ appeal is to an order dated 13th February 2015, passed by the learned Single Judge, dismissing the W.P.(C) No.6172 of 2003 thereby upholding an order of the Commissioner, Consolidation in Consolidation Revision No.2 of 2002 under Section 36 of the Orissa Consolidation of Holdings and Prevention of Fragmentation of Land Act, 1972 (OCH & PFL Act).

2. By the aforementioned order, the Commissioner, Consolidation had set aside an order passed by the Deputy Director, Consolidation, Bhubaneswar in Appeal Case No.19 of 2000 and revived the order of the Consolidation Officer in Remand Revision Case No.355 of 1995.

3. One of the questions that arose for consideration before the learned Single Judge was whether a partition deed between the brothers, i.e., late Raja Kalapahad and late Laja Kalapahad way back on 21st June, 1967 could have been overlooked by the Consolidation Authorities only because subsequently, there were Registered Sale Deeds (RSDs) recording the sale of different portions of the property jointly by the two brothers. The said question was answered in the negative by the Consolidation Commissioner and upheld by the learned Single Judge. The specific observation by the learned Single Judge in this regard is contained in Para-7 of the impugned order which reads as under:

“7. Admittedly, the registered partition deed had come into being on 21.06.1967. Simply on the basis of sales being made by the parties, thereafter, even if in deviation to that allotment made in the deed of partition, the said registered deed of partition cannot be put into the cold storage. In such a case, the registered partition deed does not become void and it is required to be avoided by getting it declared void in the competent court of law. In that situation the settled position of law comes into play that the consolidation authorities cannot ignore such registered deed of partition so long as it stands and simply because it has not been acted upon even if it is so found, the consolidation authorities have no authority to ignore it altogether as having no force in the eye of law. The authorities have no power to declare the deed as void and it must be held to be binding on the parties so long as it is not declared as void or inoperative by a court of competent jurisdiction to do so. The Consolidation Officer on the basis of evidence and field inquiry reports when arrived at a conclusion in favour of partition taking further note of the fact that there was mention of such registered deed of partition in registered sale deeds, the Deputy Director, Consolidation in appeal as it appears has simply been swayed by the settlement

record of joint recording and without assigning any reason has set aside the order of the Consolidation Officer. The Deputy Director in his order has erroneously ignored the registered deed of partition and his finding against the partition is simply based on the recording of the land in the settlement operation which is unsustainable. Thus, it is found that the Commissioner has rightly set aside the order of the Deputy Director, Consolidation and has restored the order passed by the Consolidation Officer.”

4. Having heard learned counsel appearing for the Appellant, the Court is not persuaded that any error has been committed by the learned Single Judge in affirming the order of the Commissioner, Consolidation for the aforementioned reasons.

5. There is no merit in the present writ appeal and it is dismissed as such.

I.A. Nos.737, 738, 739, 740, 741, 742, 743, 744 and 745 of 2019

6. In view of the decision passed in W.A. No.118 of 2015 on merits, these applications are not required to be dealt with at this stage and accordingly, are disposed of.

(Dr. S. Muralidhar)
Chief Justice

(M.S. Raman)
Judge

S. Behera