

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.A. No. 104 of 2015

Bhumisuta Sahu

....

Appellant

Mr. G. N. Mishra, Advocate

-versus-

***Consolidation Officer, Binka-
Dungarpali, Sonapur and others***

....

Respondents

Mr. T.R. Meher, Advocate

**CORAM:
THE CHIEF JUSTICE
JUSTICE CHITTARANJAN DASH**

**ORDER
21.09.2022**

Order No.

05. 1. This writ appeal challenges an order dated 25th February, 2015 passed by the learned Single Judge, allowing the W.P.(C) No.1703 of 2006 filed by Respondent No.4.
2. While issuing notice in the present writ appeal on 26th March, 2015, this Court directed status quo to be maintained.
3. The land in question measures Ac. 2.350 decimal in three Chakas under Holding No.113 of Mouza Gania, PS-Binkia, District-Sonapur. The land in question belonged to one Lambodhar Sahoo, who had two sons, namely, Rushi and Daitary. Talsa Sahu was the daughter of Rushi, whereas Yasoda and Bhumisuta were the two daughters of Daitary. In the final Record of Right (RoR) of

Consolidation, the land in question was not recorded in the name of Tulsa and accordingly questioning it, she filed a revision petition before the Joint Commissioner, Settlement and Consolidation, Sambalpur under Section 9(1) of the Orissa Consolidation of Holdings and Prevention of Fragmentation of Land Act, 1972 (OCHPFL Act). The Joint Commissioner remanded the matter to the Consolidation Officer, Binka- Dungarpali for a fresh adjudication. In those proceedings, Bhumisuta, the present Appellant, was the Opposite Party. She tried to bring on record a Will dated 28th March, 1979 purportedly executed by Rushi bequeathing Ac. 2.213 decimal in her favour.

4. Bhumisuta examined three witnesses in support of her stand. But, the Consolidation Officer (CO) disbelieved the Will and directed that the land be recorded in the name of Tulsa. The order was then challenged before the Deputy Director, Consolidation by Bhumisuta, the present Appellant. The appeal was allowed by believing the Will executed by Rushi as put forth by Bhumisuta. Tulsa then challenged the order of the Appellate Authority by filing a revision petition before the Joint Commissioner, Consolidation. After the revision petition was dismissed, Tulsa filed W.P.(C) No.1703 of 2006, which ultimately came to be allowed by the learned Single Judge by the impugned order dated 25th February, 2015.

5. Importantly, the learned Single Judge noted that the Will was not earlier produced during the Consolidation operation but, only after the remand to the CO. The learned Single Judge has discussed in detail the suspicious circumstances surrounding the Will purportedly executed by Rushi bequeathing the land in question not in favour of his own daughter but in favour of his brother's daughter, Bhumisuta (the Appellant). The depositions of the three witnesses examined, have been discussed in detail by the learned Single Judge, and found to be unsatisfactory and not acceptable to establish the factum of due execution of the Will by Rushi. The learned Single Judge noted that the Joint Commissioner had not discussed the evidence relating to due execution and attestation of the Will. Importantly, the learned Single Judge observed as under:

“11. xxx xxx xxx The principle envisaged in section 90 of the Evidence Act has absolutely no applicability to the case in hand. The will is dated 28.03.1979 and it was admitted in evidence on 30.04.2003. So the very first condition that the document has to be 30 years old is not fulfilled besides the settled position that the presumption is not absolute. The discretion under section 90 of the Act should not be exercised arbitrarily and the presumption may be made when the elements in the section are present and the document is on the face of it to be free from suspicion. Thus the Joint Commissioner's view in that regard is erroneous.”

6. The learned Single Judge then proceeded to deal with the plea of adverse possession and found that there were no pleadings fulfilling the ingredients to sustain such a claim. It was observed as under:

“12..... The document of title having not been established to have been duly executed and attested in the eye of law and when no specific claim of adverse possession by advancing necessary pleadings fulfilling all other ingredients have been made by opposite party no.4 both the appellate as well as revisional authorities appear to have invented a third case which is not permissible.”

6. This Court has heard the submissions of Mr. G.N. Mishra, learned counsel appearing for the Appellant and Mr. T.R. Meher, learned counsel appearing for Respondent No.4 Ananda Sahu the successor-in-interest of Tulsa.

7. The submission of Mr. Mishra is that the evidence of the witnesses recorded by the CO in a summary manner ought to have been discussed from that angle and should have been held to be sufficient to support the Will.

8. The fact of the matter is that the Will was not produced during the consolidation proceedings. When it was produced for the first time before the CO on remand by the Joint Commissioner in 2003, when it was purportedly dated 1979, it should have put the authorities on caution before readily accepting the genuineness of such document.

9. The learned Single Judge has given very cogent reasons on why the circumstances surrounding the Will were suspicious and why it should be disbelieved. Having carefully considered the impugned judgment of the learned Single Judge in light of the submissions

advanced before this Court, it is plain that no grounds have been made out to question the well-reasoned judgment of the learned Single Judge. There is accordingly no merit in this writ appeal and it is dismissed as such.

(Dr. S. Muralidhar)
Chief Justice

(Chittaranjan Dash)
Judge

S. Behera

