

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.A. No. 322 of 2012

Sarat Kumar Mishra and others ***Appellants***

Mr. Mahitosh Sinha, Advocate

-versus-

Gandharba Muduli ***Respondent***

Mr. A.K. Mohapatra, Advocate

**CORAM:
THE CHIEF JUSTICE
JUSTICE R. K. PATTANAİK**

**ORDER
27.07.2022**

Order No.

03. 1. The challenge in the present appeal is to an order dated 6th September 2012, passed by the learned Single Judge disposing of the W.P.(C) No.15002 of 2012 filed by the present Appellants. The challenge by the Appellants before the learned Single Judge was to an order passed by the learned Civil Judge (Junior Division), Bhubaneswar in an application filed by the Respondent/ Defendant in CS No.210 of 2001 filed by the present Appellants to the effect that further proceedings in the suit will remain stayed the pending proceedings under the Orissa Consolidation of Holdings and Prevention of Fragmentation of Lands Act, 1972 ('Act').
2. It must be noted here that the aforementioned suit was filed by the present Appellants, as Plaintiffs, for declaratory reliefs in respect of a property which has now been recorded under Consolidation Khata No.1003 Plot No.4316 way back in 1984 with the publication of a notification under Section 41 of the

aforementioned Act. Claiming that the wife of Appellant No.1 had purchased the suit land under a Registered Sale Deed of 17th July, 1967, the aforementioned suit was filed in 2001 during the pendency of the consolidation proceedings.

3. Admittedly, proceedings are pending under the Act to consider the correctness of an order dated 31st May 2002, passed by the Consolidation Officer order in connection with the correction of the map pertaining to the plot in question. Apparently, aggrieved by that order, the Respondent herein went in appeal before the Deputy Director which came to be dismissed on the ground of limitation on 23rd December, 2003. The revision petition filed by the Respondent being Revision Case No.1 of 2004 before the Commissioner was apparently dismissed for default on 2nd July, 2008. A restoration petition filed by the Defendant came to be allowed. Against that order the present Appellants filed W.P.(C) No.10056 of 2011 in which an order was passed by this Court remitting the matter to the Commissioner to pass a fresh order in Restoration Misc. Case No.4 of 2010.

4. When this Court enquired from learned counsel for the Appellants as well as the Respondent about the present status of the aforementioned Restoration Misc. Case, learned counsel for the Appellants states that it is still pending before the Commissioner whereas, learned Counsel for the Respondent is not aware of the present status.

5. In any event, the Court notes that in the impugned order, the learned Single Judge has correctly noted that once proceedings are

pending in respect of the same land before the authorities under the Act, it would not be prudent to allow the suit to proceed since obviously the possibility of conflicting decisions being given in the two parallel proceedings could not be ruled out.

6. The learned Single Judge has therefore correctly observed ‘if ultimately the consolidation revision preferred by the defendant is dismissed or not restored, the suit will revive and shall continue’. In other words, the learned Single Judge has declined to interfere with the order of the trial Court.

7. Having heard learned counsel for the parties, the Court is unable to come to a different conclusion from that of the learned Single Judge. No part of the order of the learned Single Judge calls for interference.

8. The present writ appeal is accordingly dismissed.

9. It will be open to the parties to approach the Commissioner to take up the restoration case expeditiously and dispose it of as early as possible.

(Dr. S. Muralidhar)
Chief Justice

(R. K. Pattanaik)
Judge