

ORISSA HIGH COURT : CUTTACK

W. P.(C) NO. 9497 OF 2004

In the matter of an application under Articles 226 and 227 of the Constitution of India.

Bhubani Rath & others Petitioners

-Versus-

Ramamani Bewa and others Opp. Parties

For Petitioners : M/s. P.K.Routray, G.Mishra,
N.K.Deo, R.K.Rout &
A.Routray.

For Opp. Parties : M/s. A.C. Swain, P.C.Mishra,
D.P.Das, B.Mishra, R.B.Mishra, R.K. Baral, S.P.Mishra,
S.Das, S.Mishra, B.Mohanty,
S.Nanda, S.Mishra, B.S.
Panigrahi and S.S. Satpathy.

(For O.P.No.8)

Decided on 09.04. 2009.

P R E S E N T :

THE HONOURABLE SHRI JUSTICE M. M. DAS

M.M. Das, J.

The petitioners in this writ petition have sought for quashing the order under Annexures-18, 19 and 20 passed by the Consolidation Officer, Nimapara, Deputy Director, Consolidation, Bhubaneswar and the Commissioner, Consolidation and Settlement, Orissa, Bhubaneswar in Remand Revision Case No. 467 of 1993, Appeal Case No. 9 of 2002 and Consolidation Revision No. 19 of 2004 respectively.

2. The property in dispute relates to the Sabik Settlement (1929-30), plot no. 129 measuring Ac.2.605 decimals which stood recorded in the name of Shri Laxminarayan Dev Marfat Kailash Chandra Rath under Sabik Khata No. 477 with the status of the land recorded as “DHAKAL BISISTA SATWO” classified as “Baje Fasal”. The said property corresponds to the 1962 Settlement plot No. 124 under khata no. 98 measuring Ac. 2.590 decimals recorded in the name of the same recorded tenant of the sabik settlement as sthitiban tenant classified as “PURATAN PATITA’. During consolidation operation, the same was recorded under khata No. 121, appertaining to plot no. 435 measuring Ac. 2.590 classified as “PATITA” in the name of the same recorded tenant as sthitiban. Opp. Parties 1 to 5 filed Revision Case No. 467 of 1993 before the Commissioner of Consolidation under section 37 (1) of the Orissa Consolidation of Holdings and Prevention of Fragmentation of Land Act, 1972 (for short, ‘the Act’) for recording an area of Ac. 1.033 decimals out of the disputed property in their favour on the strength of a registered partition deed No. 5973 dated 23.8.1941. The Commissioner, on hearing the said revision, remanded the matter to the Consolidation Officer, Nimapara for disposal under section 11 of the Act as per law impleading the Commissioner of Endowments as a party to the proceeding. The Consolidation

Considering upon the above facts, this court finally reaches in the conclusion that this court has empower to say the deed not acted upon and the disputed property is the joint family property and the right, title, interest of suit land vested with the petitioner, as such I am inclined to pass an order allowing the claims of the petitioner.

The prayer of the petitioner is allowed. The property purchased by the O.Ps should be valid up to their share only. Record the same as per vernacular order.”

The petitioners being aggrieved by the said order passed by the Consolidation Officer preferred Appeal Case No. 9 of 2002 under section 12 of the Act before the Deputy Director, Consolidation, Bhubaneswar, who by his order dated 24.1.2004 under Annexure-19 held that the suit property was the joint family property of Rath family and the deity Laxminarayan Dev is their family deity, which is not a public one, the registered partition deed dated 23.8.1941 was acted upon and accordingly, transfer of shares of late Banchhanidhi's branch is valid to the extent of Ac.1.033 decimals, the purchase made by the present opp. Party no. 8 is also valid, transfer made by Kailash to the extent of his

share, i.e., Ac. 0.869 decimals is a valid transfer and the title with regard to Ratnakar, S/O. late Bhikari, who was allotted that share in the partition will continue. Holding as above, the appellate court allowed the claim of the appellant nos. 1 to 4, i.e., petitioner nos. 1 to 4 and the claim of the appellant nos. 9, 21 and 24 in support of their purchase, the Cross Appeal No. 101 of 2003 filed by some of the opp. Parties was also disposed of by the common order by allowing the claim of the opp. Party no. 8.

The petitioners, being aggrieved by the said order passed by the appellate authority, preferred Consolidation Revision No. 19 of 2004, which, the Commissioner, Consolidation and Settlement, Orissa, Bhubaneswar disposed of by order dated 31.7.2004 under Annexure-20 confirming the order passed by the Deputy Director in the appeal. Being aggrieved, the petitioners have filed the present writ petition for appropriate relief.

3. Mr. Routray, learned counsel for the petitioners submitted that admittedly, the deity in whose name, the property stood recorded was not a party in the alleged partition deed. Ananda, S/O. Hadibandhu, who was one of the co-sharers, was also not a signatory to the partition deed. No share has been allotted to Apani and Suruji, though the partition took place in

1941 when they were alive. Another registered partition deed of the year 1956 has been annexed as Annexure-4 to the writ petition. Mr. Routray also submitted that the sales in favour of opp. Parties 6 and 7 are void. Therefore, the subsequent sale by them to opp. Party no. 8 is also void.

4. Learned counsel for the opp. Parties, on the contrary, submitted that the findings arrived at by the courts below, being findings of fact, this Court should not interfere with the same, while exercising jurisdiction under Article 226 or 227 of the Constitution of India. According to the learned counsel for the opp. Parties, the findings being concurrent and findings of fact, in absence of gross illegality or perversity shown on the face of the impugned order, this Court should not issue a writ of certiorari to quash the said orders. Learned counsel further submitted that the deed of partition, which is contended to be not binding on Ananda, being a voidable document, the courts below have rightly held that the consolidation authorities have no jurisdiction to declare the said partition deed as a void document. The petitioners are also estopped from challenging the legality of the said partition deed, which has been acted upon and has remained unchallenged for more than 60 years. Admittedly, the deity Laxminarayan Dev is a private deity.

5. Considering the submissions made by the respective parties and upon perusal of the impugned order under Annexure-20 to the writ petition passed by the Commissioner, Consolidation and Settlement, Orissa, Bhubaneswar, I find that the revisional court, after discussing in detail all the points raised before it and upon consideration of the materials available on record, has negated the contentions of the petitioners that the deed of partition should be ignored as a void documents and that non-impletion of the deity - Laxminarayan Dev is fatal to the case of the opp. Parties. The Commissioner, while up-holding the order of the Deputy Director, Consolidation with a modification, has also observed as follows:-

“.....In the instant case, the petitioners are entitled to the extent of the share of Sri Kailash Ch. Rath (which has been allotted in that partition deed) measuring an area of Ac. 0.869 only. Therefore, their names are to be recorded separately in respect of their individual purchases made in the year 1984. The balance area may be recorded in the names of the successors-in-interest of Kailash Ch. Rath and Bhikari Rath (two branches of common ancestor, Karunakar Rath) as per their entitlement in the Regd. Partition deed No. 5973 dt.23.8.41 and the name of the Deity Sri Laxminarayan Dev Bijepatrapada be recorded against the suit plot as the land in question originally belonged to the Deity, who is a perpetual minor”.

6. It is a well settled proposition of law that a writ of certiorari cannot be issued to a subordinate

court/Tribunal/authority exercising judicial/quasi judicial power by supplementing the judgment of such lower authority with a fresh judgment/order, unless the order of such subordinate authority is manifestly illegal and unjust and suffers from error of law and fact apparent on the face of it. It is also a well-known principle of law that a writ of certiorari can be issued only if the order of the inferior Tribunal or subordinate court suffers from an error of jurisdiction, or from a breach of the principles of natural justice or is vitiated by a manifest or apparent error of law. There is no sanction enabling the High Court to reappraise the evidence without sufficient reason in law and reach findings of fact contrary to those rendered by an inferior Court or subordinate Court. (See A.I.R. 1986 SC 302 (**Harbans Lal v. Jagmohan Saran**)). Nothing has been brought out before this Court to bring the impugned order within the parameters, as envisaged above, so as to call for interference by this Court with the said order by issuance of a writ of certiorari in quashing the same.

7. I, therefore, do not find any reason to interfere with the impugned order dated 1.7.2004 under Annexure-20 to the writ petition.

8. The writ petition is accordingly dismissed, but in the circumstances without cost.

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M.M. Das, J.

Orissa High Court, Cuttack.
April 9th , 2009/Biswal.
