

W.P.(C) No. 7482 of 2003

06. 25.02.2015

The petitioner is challenging the common order passed by the Joint Commissioner, Settlement and Consolidation, Bhubaneswar in Consolidation Revision Nos. 75 to 88 of 1989.

In 2. Heard learned counsel for the petitioner. None appears on behalf of the opposite parties.

3. The case of the petitioner is as under:-

The land which is the subject matter of the consolidation proceeding originally belonged to Laxmidhar Das, Bharat Charan Das and Satrugan Das, all sons of Gopal Chandra Das. Judhistir Das is the only son of Laxmidhar Das. In the final decree passed in T.S. No. 36 of 1989 in the court of learned Sub Judge, Jajpur; Judhistir Das was allotted with the land in mouza Rahania under C.S. Plot Nos. 1090, 8, 89, 9 and 241 corresponding to L.R. Plot Nos. 2072, 2074, 344, 2,364,348 and 493, whereas Laxmidhar Das got land under C.S. Plot No. 1085 corresponding to L.R. Plot No. 1740.

Thereafter Judhistir by Registered Sale Deed dated 17.11.1984 sold the land under C.S. Plot No. 1085 measuring an area Ac0.60 decimals corresponding to L.R. Plot No. 1740 of an area Ac0.66 decimals.

The Sale Deed was never challenged either by Judhistir or his legal heirs. In the year 1992 the consolidation operation began and during then, the wife and children of Judhistir raised their claims in respect of these properties said to have been transferred by Judhistir. The opposite party nos.4 to 7 lost before the consolidation officer, so they carried an appeal which was also dismissed. Thereafter in the revision filed by them, order has been passed for joint recording of the land in the name of the petitioner and those opposite parties.

4. Learned counsel for the petitioner submits that the vendor of the petitioner having acquired the absolute interest on the basis of the compromise decree and having sold the same to the petitioners, the consolidation authorities have no power to ignore the sale deed.

He further submits that findings of the Joint Commissioner and the order are contradictory. It is further submitted that the sale made by Judhistir being the karta of the joint family consisting of himself, his wife and children, even if exceeds his share, the same being for legal necessity the transaction is valid and even if it is not for legal necessity, it is not void abinitio and these opposite parties without getting such sale deed set aside in accordance with law could not have raised objection before the consolidation authority for holding that no right, title and interest have flown to the petitioner by virtue of such sale. Therefore, he urges that the land purchased by this petitioner ought to have been separately recorded as it was rightly so ordered by the appellate authority.

5. The land in question is said to have been allotted in the said final decree passed in the suit in terms of compromise in favour of Judhistir Das and those allotted to Laxmidhar is said to have devolved upon him on his death as the ancestral property in his hands. So the wife and children of Judhistir who are the opposite parties have their interest over the said properties. It appears from the recitals of the Registered Sale Deed that Judhistir has gone for sale for meeting the expenditure which he had incurred for the purpose of sudhi kriya of his father and for daughters marriage etc. Judhistir being the eldest male member of the joint family, consisting of himself, wife and children had the power of alienation of the joint family property for legal necessity, so as to bind all the members of the family in view of the settled position of law that as Karta of the Hindu Joint Family, power remains with him for alienation of the joint family property for legal necessity. When the said alienation being challenged on the ground that there was no legal necessity of the family for sale of the joint family property by the karta at the relevant time, the said sale deed is required to be set aside with such ground of attack. The deed of sale is thus not void abinitio but it is voidable at the instance of the members of the joint family provided so opted in accordance with law within the prescribed period of limitation and on being declared as such.

6. It is stated that the deed was never questioned in the court of competent jurisdiction for being declared as void on the ground that the transfer is not backed by legal necessity. In that view of the matter, the consolidation authority are bound to give due weightage to the same. Thus it appears that the Joint Commissioner, Consolidation has rightly held that Judhistir had the right to alienate the properties. But with that finding, the order having been passed for joint recording of the land in question in the names of the petitioner and the opposite parties, this Court finds the error of law apparent on the face of it.

7. Therefore, the order passed by the Joint Commissioner, Consolidation is hereby quashed and the matter is remitted to the Joint Commissioner for further examination as to whether the land covered under the deed of sale in favour of the petitioner was in fact the land allotted to Judhistir and then to dispose of the revision in the light of aforesaid discussion.

n and in accordance with law.

8. The writ petition is accordingly disposed of.

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D. Dash, J.