

Orissa High Court

Trilochan Naik And Ors. vs Sukuru Sethi And Ors. on 28 October, 1991

Equivalent citations: 1992 I OLR 296

Author: R Patnaik

Bench: R Patnaik

JUDGMENT R.C. Patnaik, J.

1. The short question that arises in this revision from an order passed by the learned Munsif, Sonepur, holding that the suit was not maintainable having regard to the provision contained in Section 51 of the Orissa Consolidation of Holdings and Prevention of Fragmentation of Land Act, 1972, is if having regard to the nature of the suit, the relief sought, Section 51 of the Consolidation Act would operate as a bar to the maintainability of the suit.

2. One Sankirtan, the common ancestor, died leaving behind three sons, Judhistira, Nila and Gokul, was died in a state of jointness. The plaintiffs and defendants 1 and 6 are the descendants. For convenience, as the parties did not pull on well, the properties were enjoyed in separate parcels and separate notes of possession were entered in the record-of-rights prepared in the 4th settlement. Some lands were also recorded as joint Khata No. 51 of the 4th settlement was acquired by Gokula out of the joint family nucleus. He was afflicted by leprosy and left the village relinquishing his right and title orally in favour of the plaintiffs and defendant No. 6. During the consolidation operation, defendant No. 1 claimed the disputed property on the strength of a deed of gift alleged to have been executed by Gokula on 24-4-1970 and his plea was accepted. The plaintiffs instituted the suit for a declaration that the schedule property was the joint property of the plaintiffs and defendant No. 6 and holding the alleged gift to be a nullity and to correct the record-of-rights by deleting the names of defendants 1 to 5 and substituting the names of the plaintiffs and defendant No. 6 instead and for permanent injunction.

3. The allegations were denied by the defendants. It was stated that after the partition amongst the brothers after the death of Sankirtan and before the commencement of the 4th settlement operation the threshing floor, the house and the Bari were alone kept joint for convenience of the parties. The property acquired by Gokula on 19-3-1963 was his self-acquired property. They denied that Gokula had relinquished his right in favour of plaintiffs and defendant No. 6 but he executed a deed of gift in favour of defendants 1 to 5 on 22-4-1970. They further alleged that during the consolidation operation, the plaintiffs did not raise any objection and the present claim was barred under Section 14 and 51 of the Act.

4. Having regard to the aforesaid pleadings, the defendants filed an application for hearing of the question of maintainability as a preliminary issue under Order 14, Rule 2 of the Code of Civil Procedure and the impugned order holding that the suit was not maintainable was passed by the learned Munsif. He held that having regard to the pleadings and the relief sought, Section 51 operated as a bar.

5. The plaintiffs have alleged that Gokula while in a State of jointness made a gift of the property. Hence the gift was a nullity and they sought declaration of their joint title with defendant No.6 in

respect of the property. Correction of the record-of right and permanent injunction were ancillary to the main relief. Section 51 reads as under:

"51. Bar of jurisdiction of Civil Courts :

Notwithstanding anything contained in any other law for the time being in force, but subject to the provisions contained in Clause (3) of Section 4 and Sub-section (1) of Section 7-

(1) all questions relating to right, title, interest and liability in land lying in the consolidation area, except, those coming within the jurisdiction of Revenue Courts or authorities under any local law for the time being in force, shall be decided under the provisions of this Act by the appropriate authority during the consolidation operations; and (2) no Civil Court shall entertain any suit or proceeding in respect of any matter which an Officer or authority empowered under this Act is competent to decide."

The cause of action for the institution of the suit was the decision of the consolidation authorities declaring the title of defendants to the property by virtue of the deed of gift and preparation of record-of-rights accordingly.

6. If having regard to the nature of the case, the consolidation authorities had no jurisdiction to entertain the claim, the decision of such authority would be a nullity and Section 51 would not operate as a bar. If the deed of gift had to be invalidated, nullified or set aside by the Civil Court, the consolidation authorities not having such jurisdiction, the decision would not operate as a bar. If invocation of the jurisdiction of the Civil Court was not necessary, the consolidation authorities would have jurisdiction and not the Civil Court and the decision having already been taken by the consolidation authorities, the remedies available to the plaintiffs and defendant No. 6 would be those provided under the Act and the jurisdiction of the Civil Court cannot be invoked. So, we have to examine the nature of the document. Is it a voidable one necessary to be invalidated or set aside by the Civil Court or is a void one which could be ignored and the parties right, title and interest could be determined by ignoring the same. The plaintiffs specifically sought a declaration of joint title with defendant No. 6 upon a declaration that the deed of gift was a nullity. They also alleged that by the time the gift deed was alleged to have been executed, Gokula was dead. So, in any event they pleaded that the document was void.

7. On the pleading also the document is void. Gokula is alleged to be a coparcener and it was said that he had no capacity to transfer by way of gift coparcenary property.

8. Law is well settled that gift of coparcener property by a coparcener is void and does not bind the other coparceners. Without burdening the judgment with decisions, I may refer to Mayne's Hindu Law and Usage, 12th Edition, paragraph 406, where the law has been summarised as follows :

"It is now equally well settled in all the States that a gift or devise by a coparcener in a Mitakshara family of his undivided interest is wholly invalid....."

though some latitude has been given to the father or managing member to make a gift of ancestral movable or immovable property in certain circumstances.

Hence, the gift made by Gokula, on the pleadings of the plaintiffs, was a void one and it was not necessary to be invalidated, nullified or set aside by the Civil Court. The consolidation authorities had jurisdiction to decide the right, title and interest and in that connection consider whether the gift made by Gokula was valid or void. It was open to the plaintiffs and defendant No. 6 to contend before the consolidation authorities that the gift was void and the consolidation authorities would have decided the right, title and interest of the parties taking the contention into account. Hence, in my view, the learned Munsif has rightly decided that Section 51 would operate as a bar to the maintainability of the suit.

9. The civil revision is accordingly dismissed. There would be no order as to costs.