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Court : Orissa

Decided On : Jun-29-1992

Reported in : AIR1993Ori64

Judge : P.C. Misra, J.

Acts : Orissa Consolidation of Holdings and Prevention of Fragmentation of Land Act, 1972 - Sections 4(4)

Appeal No. : Civil Revision No. 647 of 1991

Appellant : Pramod Kumar Dash and ors.

Respondent : Pradyumna Kumar Dash and ors.

Advocate for Def. : B.M. Mohanty, D.P. Mohanty, R.K. Nayak & B. Das

Advocate for Pet/Ap. : S. Misra-2, S. Mantry, M.C. Rath & A.K. Mishra

Disposition : Revision allowed

Judgement :

ORDER

P.C. Misra, J.

1. The plaintiffs in Title Suit No. 5 of 1982 of the court of Subordinate Judge, Kendrapara are the petitioners in this revision. The order passed by the learned

trial court allowing an application Under Sections 4(4) of the Orissa Consolidation of Holdings and Prevention of Fragmentation of Land Act (hereinafter referred to as the 'Act') has been impugned in this revision.

2. The suit is one for declaration that the registered sale deed dated 27-2-1984 executed in favour of defendants 1 and 2 in respect of the, suit land is fraudulent, invalid, without any consideration and inoperative in law and that no title can pass thereunder. The plaintiffs have also prayed for permanent injunction restraining defendants 1 to 4 not to enter upon the suit land and dispossess the plaintiffs therefrom. The case of the plaintiffs in short is as follows: The suit land which comprises of homestead, orchards, tanks and agricultural lands, are ancestral properties of the plaintiffs and defendant No. 5. According to the plaintiffs, they have got 3/4th share and defendant No. 5 has got 1/2th share. They have alleged that the properties have not been partitioned by metes and bounds and they are being jointly enjoyed by all the co-sharers. Defendant No. 3 is the wife of defendant No. 4 and defendants 1 and 2 are their sons. It has been alleged in the plaint that even though there was no legal necessity for sale of the suit lands, defendant No. 5 has executed a registered sale deed on 27-2-1974 in favour of defendants 1 & 2 the legality of which has been challenged on various grounds. The plaintiffs have alleged that the sale deed was fraudulent backed by no consideration and without any legal necessity. According to them, defendants 3 and 4 have somehow managed to obtain the aforesaid sale deed in favour of their sons to defraud the plaintiffs.

3. The defendants have filed different sets of written statements in each of which the plaint allegations have been denied. Their defence is substantially the same. They have alleged that the sale deed executed by defendant No. 5 in favour of defendants 1 and 2 was for legal necessity and is valid in law. They have denied the allegation that it was obtained fraudulently. According to them, the purchasers under the said sale deed have got their names recorded in the consolidation proceeding and, therefore, the plaintiffs have no right, title and interest in respect of the same, Several issues have been framed which arise out of the pleadings. One of the issues, namely, issue No. 6 is to the following effect:

'Is the suit hit Under Sections 4 of the Orissa Consolidation of Holdings & Prevention of Fragmentation of Land Act?'

On the date of hearing the present opp. parties 1, 2 and 3 filed an application Under Section 4(4) of the Act and prayed for deciding issue No. 6 at the first instance. This prayer was made as per the provisions contained in Order 14, Rule 2, C.P.C. The plaintiffs filed their objection to the said application. According to the plaintiffs, the said application was misconceived and was intended to delay disposal of the suit. The learned trial court by the impugned order has allowed the said application holding that the suit has abated Under Section 4(4) of the Act.

4. The learned trial court reached the aforesaid conclusion after holding that the impugned sale deed, as alleged in the plaint, is a void document and, therefore, the consolidation authorities are entitled to work out the rights of the plaintiffs on that basis. According to the learned trial court, unless the plaint alleges that a document is a voidable document, civil court would not be the proper forum for declaration of right, title and interest as in such event it would be exclusive jurisdiction of the civil court to set aside the voidable document. In this Court also the controversy between the parties is as to whether the sale deed dated 27-2-1974 was a void or voidable document as that would determine the forum where the plaintiffs would be entitled to get the reliefs prayed for in this litigation. It is because the Supreme Court in a decision reported in AIR 1973 SC 2451 *Gorakh Nath Dube v. Mari Narain Singh* indicated that where there is a document the legal effect of which can only be taken away by setting it aside or its cancellation, the consolidation authorities will have no power to do so and, therefore, it must be within the jurisdiction of the civil court to adjudicate and declare the title of the parties depending on its finding as regards the binding effect of the document. The most question which requires consideration is as to whether the sale deed impugned in the suit is a void or voidable document. Their Lordships of the Supreme Court in their decision reported in AIR 1968 SC 956 *Minsawwa v. Byrappa Shiddappa Hirekarabar* have indicated the tests to be applied to distinguish a void document from a voidable document. Their Lordships have observed that a contract or other transaction induced or tainted by fraud is not void, but only voidable at the option of the party. Such a transaction becomes

invalid only if it is avoided. Side by side their Lordships have indicated that the legal position would be different if there is a fraudulent misrepresentation, not merely as to the contents of the document, but as to its character. Fraudulent misrepresentation as to the character of the document makes the document void from the inception. But fraudulent misrepresentation as to the contents of the document renders it voidable. Their Lordships in a latter case reported in AIR 1971 SC 776 Raghubanchmani Prasad Narain Singh v. Ambica Prasad Singh (dead) by his Legal representatives expressed the view that alienation by the Manager of a joint family even if for legal necessity is voidable and not void. The aforesaid principle has been followed by this Court in the decisions reported in (1988) 66 CLT 389, Bhukhan Sahu v. Bharat Chandra Sahu, 1987 (2) OLR 108 (Ashok Kumar Samal v. Kunja Bihari Mallik and 1988 (1) OLR 616 Kartik Chandra Naik v. Smt. Gellhi Dei). In the present case the plaintiffs have challenged the sale deed executed by defendant No. 5 on the ground of fraud, non-passing of consideration and not being for legal necessity. From the averments made in the plaint, 'a copy of which was submitted in court during the course of hearing', it is difficult to ascertain as to whether the fraud complained of was in relation to the character of the document or as to its contents. But even then, the plaintiffs have further alleged that the sale deed was without any legal necessity and no consideration had passed thereunder. Following the view expressed by their Lordships in the case reported in AIR 1971 SC 776 (supra) it must be held that alienation by the Manager without legal necessity does not render the document void and that it is voidable which until avoided is a valid transaction. Thus, the consolidation authorities will have no jurisdiction to direct avoidance of the same which the civil court can alone do.

5. Mr. Mohanty, learned counsel appearing for opp. parties has placed reliance on the averments made in para 9 of the plaint where it has been alleged that the document in question is a sham and fictitious sale deed. According to him, a sham document is one under which no title could pass and such a document need not be avoided. Similar is his argument with relation to fictitious document. The aforesaid argument giving emphasis on a particular sentence of the plaint does not impress me for the reason that the plaint as a whole must be read in order to appreciate the grounds on which the document has been challenged and not a

particular sentence or paragraph to be read in isolation. The plaintiffs later challenged the execution and effect of the document on various grounds some of which, if approved, would make the document void while the others will render it voidable. In such a case also it is the civil court which is the proper forum to adjudicate the dispute and not the consolidation court as it cannot adjudicate upon all the grounds of attack and it is not permissible to challenge the legality of a document in two forums on different grounds.

6. In view of the aforesaid discussion, the conclusion is irresistible that it is the civil court which can decide the suit and it cannot be abated Under Sections 4(4) of the Act.

7. In the result, the impugned order is set aside and the revision is allowed. There shall be no order as to costs.

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