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Dhadi Muduli Vs. Natabar Muduli

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Court : Orissa

Decided On : May-12-2006

Reported in : 2006(II)OLR43

Judge : L. Mohapatra, J.

Acts : Code of Civil Procedure (CPC) , 1908 - Order 26, Rule 9

Appeal No. : W.P.(C) No. 13937 of 2003

Appellant : Dhadi Muduli

Respondent : Natabar Muduli

Advocate for Def. : A.P. Bose, Adv.

Advocate for Pet/Ap. : S.K. Mishra, Adv.

Judgement :

L. Mohapatra, J.

1. This writ application is directed against the order dated 31.8.2002 passed by the learned Civil Judge (Jr.Division), Nimapara in Title Suit No. 31 of 2003 rejecting the petition filed by the petitioner under Order-26, Rule 9 for deputing a survey knowing commissioner as well as the order of dismissal of revision filed by him before the Ad hoc Additional District Judge, Puri.

2. The petitioner had filed the aforesaid suit for declaration of title and permanent injunction apart from other consequential reliefs. Thecase of the petitioner is that in the R.O.R. of 1927 settlement the C.S. Plot No. 1013 covering an area of Ac.0.04 decimals under C.S. Khata No. 176 in Mouza-Sudhikeshar stood recorded in the name of San Sundari Muduli and Sasi Muduli in. stitiban status and that they were possessing the same and using it as homestead. Sasi Muduli died leaving behind Nata Muduli as his only legal heir who is defendant in the suit. The plaintiff-petitioner is the legal heir of San Sundari Muduli and an application was filed by the petitioner under Order 26, Rule 9 of the C.P.C. to ascertain.

(i) whether the C.S. Plot No. 1013 covers an area of 0.4 decimals only on record and map or at the spot.

(ii) whether 3 decimals out of C.S. Plot No. 1013 has been amalgamated in Hal Plot No. 554.

(iii) whether the C.S. Plot No. 1013 covers an area of only 1 decimals whereas it has been recorded as 4 decimals.

(iv) whether any part of C.S. Plot No. 1013 corresponds to Hal Plot No. 554.

(v) whether the Hal Plot No. 554 corresponds to C.S. Plot No. 1012, 1013,1014/1005.

(vi) whether the western or southern portion of Hal Plot No. 554 including the suit plot corresponds to the C.S. Plot No. 1013.

3. An objection had been filed to this petition. After hearing of the parties, the learned Civil Judge held that items No. 1 to 4 as indicated above could be determined by super imposing the relevant maps in the Court itself and spot inquiry is not required. So far as item Nos. 5 and 6 are concerned, the Court was of the view that the same could be better answered by any survey knowing person in the Court itself by making cross check of the maps and accordingly rejected the petition. Challenging the said order, the petitioner filed a revision before the Ad hoc Additional District Judge, Puri and the said revision was dismissed as not maintainable.

4. Shri S.K. Mishra, the learned Counsel appearing for the petitioner drew attention of the Court to the paragraph-8 of the trial Court order and submitted that since the trial Court was of the view that items No. 5 and 6 could be better answered by the survey knowing person, the Court should have at least appointed a survey knowing commissioner for the purpose of ascertaining the question raised in respect of the said two items.

5. On perusal of the order, it appears that in relation to the last two items, the trial Court was of the view that a survey knowing person could be examined in the Court and such Survey Knowing Person could make statement in Court by cross-checking maps. The Court never thought of deputing a survey knowing commissioner to the spot for verification.

6. In view of the above, I am of the considered opinion at the present stage deputing a survey knowing commissioner for the above purpose is not required as observed by the trial Court. Only, in the event, it is not possible on the part of the trial Court to pass an effective decree on the evidence adduced before it, the Court may think of deputing a survey knowing commissioner for the purpose of identification of the suit property. It is, therefore, observed that after closure of the evidence, if such contingency arises, either party may move the Court for appointment of a survey knowing commissioner and if such application is filed after closure of evidence, the trial Court shall consider the same keeping in mind the existing materials available on record and as to whether an effective decree can be passed on the existing materials or survey knowing commissioner is required to be deputed for passing an effective decree.

7. The writ application is accordingly disposed of.

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