
(1992) 11 OHC CK 0018

In the Orissa High Court

Case No : Second Appeal No's. 250 and 251 of 1982

Adwait Charan Patnaik

APPELLANT

Vs

Pranabandhu Mohapatra and Others

RESPONDENT

Date of Decision : 20-11-1992

Acts Referred:

Orissa Government Land Settlement Act, 1962 — Section 7, 7A

Citation : (1994) 1 OLR 507

Hon'ble Judges : G.B. Pattnaik, J

Bench : Single Bench

Advocate : S. Misra-1, for the Appellant; M.M. Sahu, for the Respondent

Final Decision : Dismissed

Judgement

G.B. Pattnaik, J.—Plaintiff is the appellant in both these appeals. Plaintiff filed the suit for declaration of right, title and interest over the suit land and for a declaration that the order of the Sub-Divisional Officer dated 12-5-1975 passed in appeal under the Orissa Government Land Settlement Act and the revisions! order of the Additional District Magistrate dated 12-5-1976 passed under the said Act are illegal. Invalid and without jurisdiction and further prayed for recovery of possession, mesne profits and for permanent injunction.

2. Plaintiff's case is based on the ground that the suit land comprising of three plots, plot Nos. 1157, 1158 and 1159 under Chata No. 359/1 had been leased out in favour of the plaintiff by the Tahasildar under the provisions of the Orissa Government Land Settlement Act and plaintiff's name had been mutated and he had paid the royalty for the same. But against the order of settlement, defendants 1 and 5 preferred an appeal and the appellate authority, namely, the Sub-Divisional Officer, allowed the appeal and set aside the settlement made in favour of the plaintiff. Plaintiff preferred a revision to the Additional District Magistrate, but that revision was dismissed and hence plaintiff filed the present suit for the reliefs as stated earlier.

3. Defendants filed their written statement denying the allegations made in the plaint and further averred that they were in possession of plot Nos. 1157 and 1158 on the basis of occupation permit granted to them much prior to the lease of the plaintiff. It was also their case that the Civil Court has no jurisdiction to set aside or interfere with the orders of the appellate and revisional authorities under the Orissa Government Land Settlement Act.

Defendant No. 5 filed a separate written statement equally denying the allegations made in the plaint and further averred that he was in occupation of plot No. 115 on the basis of occupation permit and the appeal at his instance having been allowed by the Sub-Divisional Officer and plaintiff's revision against the same having been dismissed by the Additional District Magistrate, the Civil Court cannot entertain and decide the legality of the same.

The State of Orissa was also a defendant and a written statement was filed on behalf of the State taking the same stand as that of defendants 1 to 4.

4. The learned Munsif framed seven issues. On the question of jurisdiction of the Civil Court he held that the Civil Court's jurisdiction is not barred to decide the legality of the order passed by the appellate authority or the revisional authority under the Orissa Government Land Settlement Act. He further found that the lease granted in favour of the plaintiff in respect of plot Nos. 1157 and 1158 was illegal since by that time defendants 1 to 4 were possessing the land on the basis of occupation permit granted to them and accordingly dismissed the plaintiffs suit. But so far as plot No. 1159 is concerned, he found that there was no evidence to the effect that occupation permit had been granted to defendant No. 5 and, therefore, the plaintiff's lease so far as plot No. 1159 is concerned must be held to be valid. On these findings, he decreed the suit in part so far as it relates to plot No. 1159 and dismissed the suit so far as it relates to the other two plots.

5. The plaintiff preferred an appeal against the dismissal of the suit relating to plot Nos. 1157 and 1153 which was registered as Title Appeal No. 14 of 1978 and defendant No. 5 preferred an appeal so far as plot No. 1159 is concerned which was registered as Title Appeal No. 15 of 1978. Both these appeals were heard analogously and by a common judgment the lower appellate Court disposed of the appeals. The Title Appeal filed at the instance of the plaintiff was dismissed and defendant No. 5 the Title Appeal was allowed. Hence the present second appeals. While dismissing the appeal filed by the plaintiff, the lower appellate court has held that the Civil Court will have no jurisdiction to entertain the suit in question.

6. Learned counsel for the appellant seriously challenges the correctness of the decision of the lower appellate Court with regard to the jurisdiction of the Civil Court vis-a-vis the orders passed by the appellate and revisional authorities under the Orissa Government Land Settlement Act. It is undisputed that the lease had been granted in favour of the plaintiff in respect of three plots under

the provisions of the Orissa Government Land Settlement Act. Defendants being aggrieved by the same had carried the matter in appeal u/s 7 of the said Act and the appellate authority having set aside the order of settlement made, the plaintiff himself had carried the matter in revision u/s 7-A. The revision having been dismissed, the plaintiff has filed the present suit. In view of Section 7-B of the Orissa Government Land Settlement Act. I have no hesitation to conclude that the Civil Court will have no jurisdiction to decide the legality of the appellate and revisional orders passed by the Sub-Divisional Officer and Additional District Magistrate respectively. It would not be within the powers of the Civil Court to decide the legality of the said appellate and revisional orders and once those decisions operate, the plaintiff's right, title and interest flowing from the lease in his favour cannot be granted which has been set aside by the appellate order of the Sub-Divisional Officer. In the aforesaid circumstances. I do not find any merits in these second appeals to be interfered with by this Court. Both these appeals fail and are accordingly dismissed, There will be no order as to costs.