
(2009) 09 OHC CK 0032
In the Orissa High Court
Case No : Writ Petition (C) No. 246 of 2008

Anadi Charan Bhuyan and Another	Vs	APPELLANT
The Collector and Others		RESPONDENT

Date of Decision : 04-09-2009

Acts Referred:

Evidence Act, 1872 — Section 114

Orissa Land Reforms (Amendment) Act, 1974 — Section 22, 22(3), 22(4), 22(5), 23

Citation : (2009) CLT 41 Supp : (2009) 2 ILR (Ori) 806 : (2009) 2 OLR 193
Supp : (2009) OLR 41 Supp

Hon'ble Judges : Sanju Panda, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Sanju Panda, J.—Challenge has been made in this writ petition to the order dated 29.11.2007 passed by the Collector, Jajpur in O.L.R Revision No. 1 of 2004 reversing the order dated 30.7.2003 passed by the Addl. District Magistrate, Jajpur in O.L.R Appeal No. 2 of 2000.

2. The facts of the case are as follows:

Turi Bhuyan, the father of the Petitioners had purchased a patch of land measuring an area of Ac.0.16 decs, appertaining to Plot No. 300 in C.S. Khata No. 27 of Mouza Takuathenga from one Pandab Mallik. The vendor-Pandab Mallik was a Scheduled Caste person. He applied for permission to sell the land u/s 22 of the Orissa Land Reforms Act (hereinafter referred to as "the Act"). The revenue authority granted him permission on 10.01.1967 in Misc. Case No. 30 of 1967. After obtaining the said permission, he executed the registered sale deed in favour of Turi Bhuyan on 13.02.1967 with a consideration money of Rs. 400/- and delivered the possession. Since then the purchaser was in possession of the said land and after him, the present Petitioners are in possession of the said land. From the date of purchase, they are in possession of the said land peacefully and uninterruptedly to the knowledge of everybody and mutated the

land in their names in the year 1974 and paying the rent regularly to the revenue authority. During the Major Settlement Operation, the R.O.R was published in their names.

3. While the matter stood thus, in the year 1993 the grand sons of the vendor Pandab Mallik had filed O.L.R Case No. 13 of 1993 challenging the sale deed u/s 23 of the Act alleging that the transaction was made without prior permission of the revenue authority. Therefore, the sale deed is invalid and they are entitled to get back the land and prayed for restoration of the possession. The Revenue Officer disposed of the said O.L.R Case No. 13 of 1993 on 29.1.1994 allowing the prayer of the present opposite parties 3 to 6. Being aggrieved by the said order, the present Petitioners filed OLR Appeal No. 5 of 1994 before the Addl. District Magistrate, Jajpur. He, in his turn, remanded the matter to the Revenue Officer to hear the same afresh taking into consideration the evidence adduced by the parties. On remand the Revenue Officer on 1.8.2000 in O.L.R Case No. 13 of 1993 recorded the finding that the transaction was made illegally and directed to restore the possession to the present opposite parties 3 to 6. Thereafter, the Petitioners filed an appeal before the Addl. District Magistrate, Jajpur in O.L.R Appeal No. 2 of 2000. The Addl. District Magistrate taking into consideration the evidence adduced by the parties set aside the order passed by the Revenue Officer in O.L.R Case No. 13 of 1993 and recorded the finding that prior permission was obtained by Pandab Mallik from the competent authority and neither he challenged the transaction during his lifetime nor did his son challenge the same. They remained silent for 25 years and filed the case thereafter. Against the said order, present opposite parties 3 to 6 filed O.L.R Revision No. 1 of 2004 before the Collector, Jajpur. The revision was dismissed for default on 29.10.2005. Against the said order opposite parties 3 to 6 filed W.P(C) No. 6862 of 2007 before this Court. This Court directed them to file an application to recall the order of dismissal and in such event the application should be considered on its own merits. On such an application being filed, the Collector recalled the said order. Thereafter after hearing the parties disposed of the revision by passing the impugned order dated 29.11.2007.

4. Learned Counsel appearing for the Petitioners submitted that Sections 22(3) and 22(5) of the Act have been substituted by Orissa Act 9 of 1974 which provide that while registering the document for transfer of the land belonging to Scheduled Castes persons the permission granted by the revenue officer should be recorded in the document without which the document should not be registered. Since the said provision came into force in the year 1974 and the present transaction was made in the year 1967, the revenue officer granted permission and looking into the said permission the sale deed was registered by the registering authority. As the record maintained in the year 1967 was not traceable in the record room, the Petitioners proved the entry of the application for permission available before the Office of the Sub-Collector. The said entry shows that Pandab Mallik applied for permission to sell the land and his application was allowed. He was permitted to sell the land by showing the entry

"permitted". Therefore, the finding of the revisional court, i.e. there was interpolation of the said record, was not attributed to the present Petitioners, as it was an official record and the same was kept under the authorities of the officers. Under a misconception of law and facts the revisional court recorded the said finding which is liable to be set aside.

5. Learned Counsel appearing for opposite parties 3 to 5 submitted that the present Petitioners have not been able to prove that the vendor-Pandab Mallik obtained permission for sale of the land. As the land was sold away without permission, the transaction was not valid and the Collector rightly allowed the revision. Therefore, the impugned order need not be interfered with.

6. From the rival submissions of the parties and on perusal of the record it appears that the predecessor-in-interest of the Petitioners purchased the land in the year 1967. After him, the present Petitioners are in possession of the said land peacefully and uninterruptedly without any disturbance from anybody and mutated their names in the entry register and finally R.O.R was published in their names in the Major Settlement Operation. The entries register was proved by the Petitioners that the vendor-Pandab Malik obtained permission from the revenue officers on 10.01.1967 to sell the land to a non-scheduled castes person and thereafter he registered the sale deed on 13.02.1967. As per the requirement of Section 22(4) of the Act, the registering authority taking into consideration the written permission from the revenue authority shall register the sale deed. Presumption u/s 114(e) of the Evidence Act is attracted to the present case as the register is a public document kept in the public office in due discharge of official duties. The records were obtained and produced in proper custody before the court. The question of interpolation of the said document was not the case of the either party and nobody proved the same.

7. In the result, the impugned order dated 29.11.2007 passed by the Collector, Jajpur in OLR Revision Case No. 1 of 2004 is set aside. Since the predecessor-in-interest of the Petitioners purchased the property from the vendor with the permission of the Revenue authority, the provision u/s 23 of the Act is not attracted and the opposite parties 3 to 6 are not entitled to any relief.

The writ petition is accordingly allowed. No costs.