

(1972) 01 OHC CK 0009

In the Orissa High Court

Case No : Second Appeal No. 92 of 1968

Bhagaban Chuan and Others

APPELLANT

Vs

Bhagabat Charan Bhanj and Others

RESPONDENT

Date of Decision : 06-01-1972

Acts Referred:

Orissa Tenants Protection Act, 1948 — Section 7(1)
Orissa Tenants Relief Act, 1955 — Section 11, 9(1)

Citation : AIR 1972 Ori 233

Hon'ble Judges : B.K. Patra, J

Bench : Single Bench

Advocate : Sovesh Chandra Roy, for the Appellant; H.G. Panda, (for No. 2) and S. Mohanti, (for No. 5), for the Respondent

Final Decision : Dismissed

Judgement

B.K. Patra, J.—This is an appeal against the judgment of the Additional District Judge, Balasore upholding a decision of the Munsif of Balasore decreeing the plaintiff's suit for a declaration that they and not defendants 8 to 19 are the tenants under defendants 1 to 3 in respect of the disputed lands, for confirmation of their possession therein and for restraining defendants 8 to 19 from interfering with their possession and for damages. Defendant No. 1 is a deity represented by the marfatdar defendant No. 2. Defendant No. 3 is the Endowment Commissioner and defendants 4 to 7 are trustees appointed by the Commissioner in respect of the deity. The case of the plaintiffs is that the ancestors of the defendants 8 to 19 had taken lease of the disputed lands from the marfatdar of the deity for a period of nine years commencing from 1327 Sal, that after expiry of the lease, the marfatdar took khas possession of the lands and cultivated the same till 1342 and thereafter leased out the lands to the plaintiffs and that since then the plaintiffs are in possession of the same. It is alleged that on 30-11-1943, defendants 8 to 19 cut and carried away the crops. It is therefore, that the plaintiffs filed this suit claiming the reliefs above-mentioned.

2. Defendants 8 to 19 admitted having taken the lands on lease from marfatdar in 1327 Sal for a period of nine years but alleged that even after the expiry of the period of lease, they possessed the suit lands and acquired sthitiban right therein- According to them, the plaintiffs never possessed the lands. It was also contended by them that the Civil Court has no jurisdiction to try the suit. Defendants 1 to 7 supported the plaintiff's case.

3. The trial court held that defendants 8 to 19 to whom the lands were leased out for a period of 9 years in 1327 Sal gave up possession of the same after expiry of the period of lease, that the marfatdar thereafter remained in khas possession of the lands on behalf of the deity till 1342 Sal when the plaintiffs were inducted as tenants therein and that the latter are still in possession of the lands. Holding further that the suit is maintainable in the Civil Court, he passed a decree in favour of the plaintiffs. All the findings recorded by the trial court were affirmed in appeal by the learned District Judge. Hence this appeal by defendants 8 to 19.

4. The concurrent findings of the Courts below on the question of fact are not assailed before me. The only ground urged at the time of hearing of this appeal is that the Courts have gone wrong in holding that the Civil Court has jurisdiction to try the suit. In support of this contention, reliance is placed on Section 11 of the Orissa Tenants Relief Act, 1955 (hereinafter referred to as the Relief Act). That section runs thus:

"If any dispute arises as to the identity of the tenant in cultivation of any land on the 1st day of July 1954 or at any time thereafter, such question shall, after such enquiry as may be prescribed, be forthwith decided by the Collector on his own motion or on the application of the landlord or any person claiming to be in such cultivation; and the Collector shall also have power to pass such other order or orders as he may deem necessary."

The principle is well settled that if a statute purports to exclude the ordinary jurisdiction of Civil Courts in regard to any particular matter, it must do so either by express terms or by the use of such terms as would necessarily lead to the inference of such exclusion and that the exclusion of the jurisdiction of Civil Courts is not to be readily inferred. To understand the true import of Section 11, it is necessary to refer to Section 9 (1) of the Relief Act and Section 7 (1) of the Orissa Tenants Protection Act, 1948 (hereinafter referred to as the Protection Act). Section 9(1) of the Relief Act runs thus:

"9 (1) Any dispute between the tenant and the landlord as regards-

(a) tenant's possession of the land on the first day of July 1954 or at any time thereafter and his right to the benefits under this Act; or

(b) failure of the tenant to deliver to the landlord the rent accrued due within two months from the date on which it becomes payable; or;

(c) the quantity of the produce payable to the landlord as rent; or

(d) the right of landlord to resume land for personal cultivation in pursuance of Section 4; or

(e) failure of the tenant to cultivate the land or use of the same by him for any non-agricultural purpose; shall be decided by the Collector on the application of either of the parties;

Provided that such application shall be filed before the Collector in the prescribed manner within sixty days from the date on which the dispute arises or from the date of the passing of this Act, whichever is later".

Section 7 (1) of the Protection Act may also be quoted.

"7. (1) Any dispute between the tenant and the landlord as regards-

(a) tenant's possession of the land on the 1st day of September, 1947, and his right to the benefits under this Act; or

(b) misuse of the land by the tenant; or

(c) failure of the tenant to cultivate the land properly; or

(d) failure of the tenant to deliver to the landlord the rent accrued due within two months from the date on which it becomes payable; or

(e) the quantity of the produce payable to the landlord as rent shall be decided by the Collector on the application of either of the parties."

Section 7 of the Protection Act came up for interpretation before the Supreme Court in *Magiti Sasamal Vs. Pandab Bissoi*, and it was held that Section 7 (1) postulates the relationship of tenant and landlord between the parties and proceeds to provide for the exclusive jurisdiction of the Collector to try the five categories of disputes that may arise between the landlord and the tenant, and mentioned in Section 7 (1). Their Lordships held in that case that a dispute regarding the existence of relationship between the landlord and the tenant does not fall to be determined by the Collector u/s 7 (1) of the Protection Act and that such a dispute is a matter to be decided by the Civil Courts. That interpretation given in respect of Section 7 of the Protection Act must, having regard to the language of Section 9 (1) of the Relief Act apply also to the five categories of disputes mentioned therein. It must also follow that a dispute regarding the existence of relationship between the landlord and the tenant cannot be determined by the Collector u/s 9 (1) of the Relief Act and that such a dispute has to be decided by the Civil Courts. It was, however, pointed out that the Protection Act did not contain a provision corresponding to Section 11 of the Relief Act and that consequently the view expressed by the Supreme Court in *Pandab Bissoi*'s case that a dispute as to the existence of relationship of landlord and tenant between the parties is a matter to be decided by the Civil Courts cannot hold good in the context of the Relief Act, which contains a specific provision like Section 11. It is contended by Mr. Roy appearing for the appellants that a dispute regarding the identity of the tenant in cultivation of any land

referred to in Section 11 of the Relief Act means a dispute regarding the existence of relationship of landlord and tenant and that by the express terms of the section such a dispute has to be decided by the Collector and not by the Civil Court. Assuming that such an interpretation is correct, it postulates a dispute between the landlord on one side and the tenant on the other regarding the existence of the relationship and cannot in my opinion extend to a case where the dispute is between two sets of tenants each set claiming to be tenants under the landlord. That apart in the present case, there is no dispute at all between the plaintiff-tenants and the landlord because the landlord-defendants support the claim of the plaintiffs that they are the tenants under the landlords in respect of the disputed lands. As already stated, the dispute in this case is between the plaintiffs on one side who claim to be tenants of the landlords and defendants 8 to 19 on the other who also lay a similar claim. To such a dispute as this the landlords are not even necessary parties although they may be proper parties. The Courts below were therefore right in the view that they have taken that the Civil Court has jurisdiction to decide the dispute.

5. In the result, the appeal fails and is dismissed with costs.