
(1968) 08 OHC CK 0002
In the Orissa High Court
Case No : Second Appeal No. 555 of 1964

Bhagaban Rath

APPELLANT

Vs

Ananda Das

RESPONDENT

Date of Decision : 28-08-1968

Acts Referred:

Orissa Estates Abolition Act, 1951 — Section 18, 5, 6(1)

Citation : (1968) 34 CLT 1289

Hon'ble Judges : G.K. Misra, J

Bench : Single Bench

Advocate : G. Hath and D.C. Mohapatra, for the Appellant; S. Misra and P.C. Misra, for the Respondent

Final Decision : Allowed

Judgement

G.K. Misra, J.—On 3-12-1945 Defendant took a loan of Rs. 400/- from the Plaintiff on execution of a mortgage bond (Ex. 1). he mortgaged property was Tanki Babel land. Defendant paid Rs. 325/- in different instalments. The suit is for recovery of the balance with interest by ale of the mortgage security. The Defendant in the written statement stated that though Ex. 1 was written for Rs. 400/-, only Rs. 200/- was advanced. He executed Ex. 1 thinking it to be a money bond and that the suit was not maintainable under the provisions of the Orissa Estates Abolition Act, 1951 (hereinafter referred to as the Act). He also took to a plea of payment of the enter loan.

The trial Court believed the case of the Plaintiff regarding execution and passing of consideration under the pronote (Ex. 1) and the story of repayment. It, however, dismissed the suit on the view that as Tanki Bahel land vested in the State under the Act, the mortgage security was no longer available for sale for the discharge of the loan and the remedy of the Plaintiff was to pursue the compensation money payable to the Defendant u/s 18 of the Act. The lower Appellate Court agreed with the trial Court on all the issues and dismissed the appeal. Against the confirming Appellate decree the second appeal has been filed.

2. The concurrent findings of the Court below regarding passing of consideration and repayment of the dues have not been questioned before this Court. The only point raised by Mr. Rath is that u/s 6(1) of the Act, the disputed property shall be deemed to be settled with the Defendant ex-intermediary on and from the date of vesting and it is liable to be proceeded against for realization of the mortgage dues. Mr. Misra relies upon Section 5(e) of the Act for the proposition that the disputed property is no longer available for realisation of the mortgage dues.

3. To appreciate the rival contentions, it would be necessary to examine the scope of Sections 5(0) and (e) and 6(1) of the Act. Section 5 deals with the consequences of vesting of an estate in the State. Section 5(a) lays down that the entire estate including various subject-matters dealt with therein shall vest absolutely in the State Government free from all incumbrances, and such intermediary shall cease to have any interest in such estate other than the interest expressly saved by or under the provisions of the Act. It would thus be clear that whatever interest has been expressly saved did not vest in the State. Section 6(1) deals with the homesteads of intermediaries and buildings together with lands on which such buildings stand in the possession of intermediaries and used as golas, factories or mills to be retained by them on payment of rent. It runs thus:

With effect from the date of vesting, all homesteads comprised in an estate and being in the possession of an intermediary on, the date of such vesting, and such buildings or structures together with lands on which they stand, other than any buildings used primarily as offices or kutoheries or rest houses for estate servants on duty as were in the possession of an Intermediary at the commencement of this Act and used as golas (other than golas used primarily for storing rent in kind), factories or mills for the purpose of trade, manufacture or commerce, or used for storing grains or keeping cattle or implements for the purpose of agriculture and constructed or established and used for the aforesaid purposes before the 1st day of January, 1946, shall, notwithstanding anything contained in this Act, be deemed to be settled by the State Government with such Intermediary and with all the share-holders owning the estate, who shall be entitled to retain possession of such homesteads and of such buildings or structures together with the lands on which they stand, as tenants under the State Government subject to the payment of such fair and equitable ground-rent as may be determined by the Collector in the prescribed manner.

Section 6(1) thus saves the properties mentioned therein from vesting in the State and they shall be deemed to be settled by the State Government with such intermediary. The process of vesting and saving operates simultaneously. The properties so saved continue to be the properties of the ex-intermediaries without the title being in any way extinguished at any time subject to payment of fair and equitable rent.

4. The next question is whether if such properties, if mortgaged prior to the vesting, are protected from being pursued under the provisions of Section 5(e) of

the at which runs thus:

No suit shall lie in any Civil Court in respect of any money due from such Intermediary the payment of which is secured by a mortgage of or is a charge on such estate and all suits executions and other proceedings in respect of the mortgage or charge which may be pending on the date of vesting shall be dropped.

Section 18 of the Act merely deals with the time within which secured creditors and maintenance-holders may file claims.

5. A similar case came up for consideration in *Brundaban v. Natabar* ILR 1963 Cutt. 914, and their Lordships held that the lands referred to in Section 6(1) are deemed to be settled with the ex-intermediary on raiyati basis, and that if there was a mortgage or charge on the estate prior to the vesting, there would be no bar to a suit or proceeding continuing in respect of such land notwithstanding the change in the character of the land.

The Plaintiff in this case is bound to succeed on the authority of the aforesaid decision.

6. Mr. Misra, however, contends that the aforesaid Orissa case : based on *Sidheshwar Prasad Singh and Others Vs. Ram Saroop Singh and Others*, , does not lay down good law tested in the light of the observations of the Supreme Court in *Rana Sheo Ambar Singh Vs. Allahabad Bank Ltd., Allahabad*, . The identical point was raised in the aforesaid Division Bench case by reference to *Rana Sheo Ambar Singh Vs. Allahabad Bank Ltd., Allahabad*, , and to *Krishna Prasad and Others Vs. Gauri Kumari Devi*, , and was rejected.

7. In the result, the judgments of the Courts below are set aside and the Plaintiff's suit is decreed. The second appeal is allowed with costs throughout.