
(1990) 09 OHC CK 0014
In the Orissa High Court
Case No : Second Appeal No. 113 of 1980

Bhikari Nayak

APPELLANT

Vs

Brajabandhu Nayak and Others

RESPONDENT

Date of Decision : 21-09-1990

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 9
Orissa Land Reforms Act, 1960 — Section 15, 2(31), 3, 67
Orissa Tenancy Act, 1913 — Section 4

Citation : AIR 1991 Ori 191 : (1991) 71 CLT 571

Hon'ble Judges : B.L. Hansaria, C.J.; S.C. Mohapatra, J

Bench : Division Bench

Advocate : R.K. Mohapatra and S.C. Basa, for the Appellant; L. Mohapatra, J.P. Misra, P.K. Misra, B. Baug, P.K. Nanda and B. Pai, Amicus Curiae, for the Respondent

Judgement

S.C. Mohapatra, J.—Plaintiff is appellant in this second appeal against a reversing judgment where question for consideration is whether the suit is maintainable u/s 67 of the Orissa Land Reforms Act, 1960 (hereinafter referred to as "the Act") which reads as follows :--

"Save as otherwise expressly provided in this Act, no Civil Court shall have jurisdiction to try and decide any suit or proceeding so far as it relates to any matter which any officer or other competent authority is empowered by order under this Act to decide."

2. Plaintiff has sought for declaration of his title as sikmi tenant under defendant No. 1 in respect of 1 acre 48 decimals of agricultural land in village Bramhagiri governed under the Orissa Tenancy Act, 1913 (hereinafter referred to as "the Tenancy Act") and further declaration that defendants Nos. 2 and 3 have no interest in the land. On the basis of these declarations, consequential reliefs have been sought for.

3. Case of plaintiff is that his father Bhima Nayak was possessing the disputed

land as sikmi tenant paying Raj Bhag to father of defendant No. 1, the landlord who was the raiyat in respect of the suit land. Being his only son and legal representative, plaintiff continued to possess the property on payment of rent to father of defendant No. 1 and after him to defendant No. 2. Since defendant No. 1 tried to disturb his possession with help of his supporters, suit was filed. Plaintiff asserted that his interest of sikmi tenant is heritable according to the custom prevailing in the area.

4. Originally defendant No. 1 alone was the defendant. He filed written statement accepting that father of plaintiff was a sikmi tenant under his father. However, in absence of any custom of inheritance of such right in the area, possession of disputed land was taken over by his father on death of father of plaintiff. Defendant No. 1 claimed to be in possession and enjoyment of the disputed land since then and plaintiff was never in possession.

5. Defendants Nos. 2 and 3 were impleaded on their application. They filed a joint written statement asserting that disputed land was recorded in name of the deity Sri Brundaban Chandra Deb in the record of rights of 1927 through Marfatdar Hajuri Balabhadra Khuntia, father of defendant No. 1. Father of plaintiff was recorded as sikmi tenant. Balabhadra transferred his ownership in favour of one Ram Sundari Devi wife of Govind Chandra Das. Father of plaintiff continued as sikmi tenant under the transferee. However, in a decree for realisation of arrear rent, against father of plaintiff, suit land was put to auction by executing Court. It was purchased on 2-12-1935 by Puri Central Co-operative Bank Limited, and possession was delivered to the auction purchaser by Court on 20-5-1937. Bank transferred the disputed land in favour of father of these defendants by registered sale deed dated 10-6-1944. Since then father of defendants Nos. 2 and 3 was possessing the suit land as sikmi tenant under Govind Chandra Das, husband of Rama Sundari Devi. In Hal settlement, defendants Nos. 2 and 3 have been recorded as sikmi tenants under the deity Sri Brundaban Chandra Deb through Marfatdar Govind Chandra Das. They claimed that suit is not maintainable.

6. During pendency of suit defendant No. 1 expired after filing his written statement. His legal representatives were substituted. Plaintiff and legal representatives of defendant No. 1 entered into a compromise where plaintiff was accepted to be sikmi tenant under them.

7. Trial Court decreed the suit accepting case of the plaintiff that he inherited suit properties on death of his father in the year 1948 and father of defendant No. 1 was accepting rent from him recognising him as sikmi tenant. Sale in favour of Bank was held to be invalid and accordingly, defendants Nos. 2 and 3 did not acquire any title on account of purchase by their father. Trial Court held that suit is maintainable.

8. Appellate Court allowed the appeal by defendants Nos. 2 and 3 on finding that suit is not maintainable since Civil Court has no jurisdiction to entertain the suit

u/s 67 of the Act.

9. When this second appeal was heard by a learned single Judge, reliance was placed by the appellant on an earlier decision reported in 64 (1987) CLT 14 Rusi Kumar Sahu v. Sri Rasa which fully supports contention of the appellant in respect of maintainability of the suit. In the said decision, it has been observed :--

"An under-raiyat, who has not been declared to be a raiyat continues to hold his status as an under-raiyat. Therefore, the dispute raised in this case cannot be called a dispute between the landlord and a raiyat. "Tenant" as defined in the O.L.R. Act means a person, who has no right in the land of another but personally cultivates such land on payment of rent to cash or kind. The status of an under-raiyat is quite different than that of a tenant. The status of an under raiyat is something more than that of a tenant as he has an interest in the land. Therefore, the present dispute cannot be called as a dispute between a landlord and a tenant..... Thus, relief as to declaration of status of an under-raiyat sought for in the suit is not available to be granted under the provisions of Orissa Land Reforms Act by a Revenue Officer. In this view of the matter the Civil Court would continue to have jurisdiction to decide the aforesaid dispute."

Learned single Judge has referred the second appeal to be heard by a Division Bench as correctness of the reported decision was doubted.

10. The Orissa Tenancy Act, 1913 is extended to a part of Orissa but the Act is extended throughout the State where several tenancy laws are in force. Section 3 of the Act provides that provisions of the Act shall prevail over all other laws if there is inconsistency. Therefore, harmonious construction is to be made and in case it would not be possible, provisions of the Act shall prevail.

11. Under the Orissa Tenancy Act "Tenant" is a broad term. Section 4 of the said Act classifies tenants. Under-raiyat as classified in Section 4 of the Orissa Tenancy Act is a Tenant under that Act.

12. Section 4 of the Orissa Tenancy Act classifying tenants under that Act does not specifically provide for a sikmi tenant. This term gained ground after the revision settlement in Orissa (1929-1932 A.D.). In the final report on the revision settlement of Orissa by N. W. Dalmiel, I.C.S. Settlement Officer, Orissa in paragraph 65 at page 23, it has been stated that under-raiyats were recorded as sikmi tenants in the record of rights. Thus, sikmi tenants in respect of agricultural lands governed under the Orissa Tenancy Act are under-raiyats as classified in Section 4. This position has been clarified in the decision reported in (1961) 3 OJD 331 (Bhikari Bhoi v. Jagannath Mohapatra) where it has been held that status of under-raiyat is neither heritable nor transferable unless supported by custom.

13. Relationship of raiyat and under-raiyat is created by contract whether oral or written. Thus, one of the contracting parties can avoid the contract unless

prohibited by law. Rent is the consideration for the contract. Rent could have been paid as mutually agreed upon. Under-raiyat like any other person can be evicted at the will of the raiyat. In order to curb power of the raiyat to demand higher rent, limitation was fixed u/s 56 of the Orissa Tenancy Act. Similarly, right of eviction was also restricted u/s 57 of the said Act by providing that in case the relationship is created by written lease, under-raiyat can be evicted after expiry of the term provided in the lease. In any other case, an under-raiyat can be evicted at the end of the agricultural year provided notice of at least six months has been given by the raiyat to the under-raiyat. Even if interest of an under-raiyat is heritable and transferable by custom prevailing, successor or transferee has the same liability. Thus, inheritance or transfer of under-raiyat does not create any higher interest in land. Only interest available to a sikmi Tenant who is under-raiyat is cultivation of land of another on payment of rent within restriction for higher rent provided in Section 56 and restriction for eviction u/s 57 of the Act.

14. A raiyat may receive rent from an under-raiyat in cash or in kind. Any person holding land under a raiyat paying rent was deemed to be a tenant under definition of "Tenant" in the Orissa Tenants Protection Act, 1948. Status of under-raiyat classified as Tenant u/s 4 of the Orissa Tenancy Act, under the Orissa Tenants Reliefs Act, 1955 which replaced the Orissa Tenants Protection Act has been settled in the decision reported in (1971) 2 CWR 690 (Satis Chandra Bardhan v. Raghunath Das) by a Division Bench of this Court where it has been observed :

"It cannot be disputed that the Orissa Tenants Relief Act is intended to prevent indiscriminate eviction of tenants and is intended to be a protective statute to safeguard security of possession of tenants. A sikmi tenant under the Orissa Tenancy Act has no permanent right in the land. He is an under-raiyat as defined in Section 4(3) of that Act. Section 57 of the Tenancy Act provides that an under-raiyat shall not be liable to be evicted by his landlord, except (a) on the expiration of the term of a written lease; or (b) when holding otherwise, then under a written lease, at the end of the agricultural year within which a notice to quit has been served upon him by his landlord provided that such notice has been served upon him not less than six months before the end of the year. In the present case, there is no written lease creating the sikmi tenancy and therefore the case is governed by Clause (b) of Section 57 of the Tenancy Act. The sikmi tenants can thus be evicted at any time by giving notice as contemplated in Clause (b) of Section 57. It is to afford protection to this and certain other categories of tenants who could be evicted from the land under their cultivation that the Legislature stepped in to enact first the Orissa Tenants Protection Act and later on the Orissa Tenants Relief Act."

This decision has been followed by another Division Bench in the decision reported in 41 (1975) CLT 987 Madhusudan Subudhi v. Doma where it has been held that a bhag tenant is an under-raiyat. This decision has been approved by

the Full Bench in the decision reported in Radhamani Dibya and Others Vs. Braja Mohan Biswal and Others, overruling the observation in a decision of another Division Bench reported in (1972) 1 CWR 381 State of Orissa v. Narendra Kumar Routray that a tenant under the Orissa Tenancy Act, 1913 has an abiding interest in land and is not a person who can be thrown out as a tenant at will. Full Bench relied upon two decisions of the Supreme Court reported in Bhudan Singh and Another Vs. Nabi Bux and Another, and Chander Sekhar Singh Bhoi Vs. State of Orissa, also to hold that bhag tenant is an under-raiyat.

From the aforesaid discussion, inference can be drawn that a sikmi tenant paying rent either in cash or kind is an under-raiyat under the Orissa Tenancy Act who has no abiding interest in the property and can be thrown out by the raiyat who is his landlord as a tenant at will.

15. Those tenants who received protection under the temporary statutes like the Orissa Tenants Protection Act, 1948 and the Orissa Tenants Relief Act, 1955 were given protection permanently under the Orissa Land Reforms Act, 1960. Keeping in view the status of tenants as defined in the temporary legislations, the Act defined Tenant" u/s 2(31) to be a person who has no right in the land. Since Full Bench decision of this Court has clarified that a Bhag tenant who is under-raiyat, has no abiding interest in the land occupied by him for cultivation, the term "no right in land" in the definition of "tenant" in Section 2(31) of the Act is to be interpreted to mean "No abiding interest" in land. Full Bench clearly observed :

"....." The status of an under-raiyat is quite different than that of a tenant. The status of an under-raiyat is something more than that of a tenant as he has an interest in the land" is not a correct interpretation which is overruled".

16. Coming to the observation in 64 (1987) CLT 14 (supra). "Thus, relief as to declaration of status of an under-raiyat sought for in the suit is not available to be granted under the provisions of Orissa Land Reforms Act by a Revenue Officer", at the first instance it is to be observed that an earlier decision of a single Judge reported in Manhu Mallik and Another Vs. Smt. Gedi Dei and Others, was not brought to notice of our learned brother. In this decision, it has been laid down that declaration of permanent sikmi right is a dispute which is to be decided by the Revenue Officer u/s 15 of the Orissa Land Reforms Act and no Civil Court shall have jurisdiction to entertain and try the suit as provided in Section 67 of the Orissa Land Reforms Act. Decision of an earlier Bench of coordinate jurisdiction is binding on the later Bench unless the matter is referred to a larger Bench for decision. Observation in 64 (1987) CLT 14 (supra) being inconsistent with the decision in Manhu Mallik and Another Vs. Smt. Gedi Dei and Others, cannot prevail.

17. Secondly, provision in any Act is to be interpreted keeping the object of the legislation and intention of the legislature in view. If words are wanting for clarity of intention, Court can supply words to the plain language, as has been held in the decision reported in Commissioner of Income Tax, Bangalore Vs. J.H. Gotla,

Yadagiri, .

18. Under the Act, legislature intended that tiller of the soil should have right of occupancy. In that view provisions were made in Section 4 for declaring under-raiyats and under tenants as raiyats on payment of compensation to the raiyats under whom they hold the land. In many areas of the State, the Orissa Tenancy Act is not in force. There is no scope for tenants in those areas either to be under-raiyats or under-tenants under the Orissa Tenancy Act. Those who do not come within scope of under-raiyats or under tenants, other provisions like Sections 26, 30 and 36-A were made where they can also get status of raiyats on payment of compensation to the raiyats. Legislature took note that many raiyats may not have capacity to cultivate land themselves. They were declared as privileged raiyats or persons under disability. Tenants under them were provided to be treated differently. Ceiling was fixed beyond which a person cannot hold land and excess land would be taken away to be distributed. For the excess lands taken away, compensation was provided. u/s 6(2) provision was made that a raiyat who is not a person under disability or a privileged raiyat, cannot transfer land by way of lease which would be void and inoperative and where such transfer is made in contravention of Section 6(2), transferee was given right u/s 36-C to get himself declared as raiyat. Entrustment of land by one to another for cultivation for payment of rent temporarily may not in all circumstances be transfer by lease. Legislature took note that adjudication of disputes in Civil Court may not serve the object of legislation. Therefore, power of adjudication was exhaustively given to tribunals created under the statute. Thus, dispute between raiyats and their landlords are provided to be adjudicated u/s 12. If a person claims to be a raiyat under a landlord and the landlord disputes the said person to be a raiyat either factually or on account of any provision in any law, such dispute is provided to be decided by the Revenue Officer. Similarly, a person's claim that he is a tenant under the landlord and dispute of such relationship by the landlord either factually or on account of legal provisions in various statutes including the provisions of the Act are to be decided by the Revenue Officer u/s 15. All those matters which can be decided by the Revenue Officer were prohibited by the Legislature to be tried and decided by Civil Court as provided in Section 67. This is a specific bar as provided u/s 9, C.P.C.

19. In conclusion:

(a) Sikmi Tenant is under-raiyat as classified as Tenant u/s 4 of the Orissa Tenancy Act, 1913. Bhag tenant in the areas governed by Orissa Tenancy Act, 1913 is also an under-raiyat. A person whether a sikmi tenant or bhag tenant in an area of the State where the Orissa Tenancy Act is in force has no abiding interest in land. Observation in 64 (1987) CLT 14 (supra) that status of an under-raiyat is something more than that of a tenant as he has an interest in the land is overruled.

(b) the term "it has no right in the land of another" in the definition of "tenant" u/s 2(31) of the Act is to be interpreted as "it has no abiding interest in the land of

another". Right of cultivation with protection from paying higher rent or from eviction is not an abiding interest in land.

(c) Where one party to the dispute claims to be a tenant under the other party and there is a dispute of such relationship either on account of factual position or legal position, such dispute is to be decided by the Revenue Officer having exclusive jurisdiction u/s 15(1)(d) of the Act ; and

(d) Section 67 of the Act bars jurisdiction of the Civil Court to try and decide such a matter and observation in 64 (1987) CLT 14 (supra) that Civil Court would continue to have jurisdiction to decide the question of existence of status of sikmi tenant, is overruled.

20. In the present case, plaintiff claimed to be sikmi tenant under deceased defendant No. 1 existence of which relationship has been disputed in the written statement by the deceased defendant No. 1. Therefore, suit for declaration of sikmi tenancy is not entertainable by the Civil Court. Once the suit is not entertainable by the Civil Court, recording of compromise between legal representatives of deceased defendant No. 1 and the plaintiff in the suit by the Civil Court is without jurisdiction.

21. Our learned brother referred the question relating to jurisdiction of Civil Court on the facts of this case to be decided by a Division Bench. The point referred having been decided in this judgment, second appeal shall now be heard by our learned brother on the substantial questions of law formulated u/s 100, C.P.C.

B.L. Hansaria, C.J.

22. I agree.