
(1970) 06 OHC CK 0004
In the Orissa High Court
Case No : Second Appeal No. 433 of 1965

Bhimo Moharana	Vs	APPELLANT
Mohan Moharana and Others		RESPONDENT

Date of Decision : 23-06-1970

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 103
Constitution of India, 1950 — Article 16(2)
Limitation Act, 1963 — Article 65

Citation : (1970) 36 CLT 1120

Hon'ble Judges : G.K. Misra, C.J.; B.K. Patra, J

Bench : Division Bench

Advocate : N.V. Ramdas, for the Appellant; A. Tripathy and P.V. Ramdas, for the Respondent

Final Decision : Dismissed

Judgement

G.K. Misra, C.J.—One Sanyasi Moharana had three sons, Ekadasi, Kalu and Satyabadi. The first two sons died issueless. Admittedly, Satyabadi hold the office of village blacksmith of village Dalasarakhandi. The suit lands consisting of 3.38 acres were annexed to the office towards the emoluments. Satyabadi had five sons, Bhima (Plaintiff), Lakshmana, Natabara, Mohana (Defendant No. 1) and Madan. Bhima, the eldest son, was admittedly serving tender the Railways till 1959 when he retired; after retirement in that very year he filed the suit. Natabar died about 25 years ago. Madan is still in Railway service. Learned Advocates were not able to tell us what Lakshman is doing now. Plaintiffs case that after the death of Satyabadi in 1949 he let out the lands to defendant No. 3 for one year and that the latter executed a muchalika (Ext. 1). Plaintiff claims title to the disputed property on the strength of Section 12 of the Madras Hereditary Village Offices Act, 1895 (Madras Act III of 1895) (hereinafter to be referred to as the Act), whereunder he claims that the succession to the village office devolved on him in accordance with customary law of primogeniture. He accordingly prayed for declaration of title and recovery of possession and other

incidental reliefs. The aforesaid claims were contested by defendant No. 1. Defendant No. 2 is the son of defendant No. 1.

2. The main defence case is that even prior to the death of Satyabadi, defendant No. 1 had acted as the village Blacksmith from 1946 as Satyabadi was unable to perform the duties of that office due to illness and bad eyesight. Ever since then he (defendant No. 1) has been in possession of the disputed property as emoluments attached to the office, and it was only in 1959 that the plaintiff disputed his claim and filed the suit.

3. A large number of issues were framed in the suit. Both the courts have concurrently accepted the defence version that defendant No. 1 came into possession of the disputed property prior to the death of his father and was discharging the duties of the village blacksmith. They rejected the plaintiffs story that he was in possession through defendant No. 3 under Ext. 1, They were also of the view that Section 12 of the Act is unconstitutional and that there cannot be any succession to the office village blacksmith by the application of the law of primogeniture. The plaintiffs suit was accordingly dismissed as he failed to establish his claim to the office as well as possession of the lands. It may be noted that the trial Court gave a clear finding that the plaintiff failed to establish his case of succession by customary law of primogeniture. The appellate court, however, did not discuss this question or record any finding thereon. Against the confirming judgment of the court below the present second appeal was filed by the plaintiff.

4. The second appeal, in the first instance came up for hearing before our learned brother Justice R. N. Misra who referred the matter to a larger bench as, according to him, the Division Bench decision of this Court in Bhaskar Moharana Vs. Arjun Moharana and Others, , on which the Courts below have relied, does not lay down the law correctly, and the correct law has been laid down in Manepalli Sattemma Vs. Manepalli Satyanarayana and Another, .

5. After having heard Mr. N. V. Ramdas at length we are of opinion that this second appeal is concluded by pure findings of fact and no question of law arises. Mr. Ramdas was called upon to place before us the evidence in support of the plaintiffs case of succession by customary law of primogeniture. The trial Court's clear finding is that the evidence in support of the plaintiff's case was practically nil. Mr. Ramdas was unable to place any material before us to the contrary. As the appellate court exercised its jurisdiction illegally in not recording a finding on this point, in exercise of our powers u/s 103, Civil Procedure Code, we called upon Mr. Ramdas to place the evidence. He was unable to dislodge the finding on going through the evidence. We are satisfied that the finding recorded by the trial Court is correct and accordingly hold that the plaintiff failed to establish the case of succession by the law of primogeniture.

6. The result is that the plaintiff has failed to establish his case of succession to the office as well as possession of the disputed lands. On the contrary, the

concurrent finding of both the courts is that defendant No. 1 is in possession of the disputed lands from 1946 -- even prior to the death of his father -- for more than 12 years, and has been performing the duties of the village blacksmith. The onus is on the plaintiff to establish his case, and as he has failed to do so, the suit can be dismissed on this simple ground even on the footing that Section 12 of the Act is not unconstitutional. We may further add that on the footing that defendant No. 1 is in continuous peaceable possession of the disputed lands in his own right, title and interest for more than one statutory period of 12 years, he has acquired title by adverse possession as against the plaintiff even if the plaintiff had any.

7. In *Bhaskar Moharana Vs. Arjun Moharana and Others*, it was held by a Bench of this Court that Section 12 of the Act, in so far as it prescribes that succession to the village offices in Section 3 (4) shall devolve in accordance with law or custom applicable thereto at the date on which the Act came into force, is unconstitutional being hit by Article 16(2) of the Constitution which lays down that no citizen shall, on grounds only of religion, race, caste, descent, place of birth, residence or any of them, be ineligible for or discriminated against in respect of any of employment or office under the State.

Mr. Ramdas attacked the correctness of this decision on two grounds. Firstly, he contended that the office of village blacksmith is not an office under the State as stated in Article 16(2). Secondly, even if it is an office under the State, there is no employment or appointment to this office under the State. In support of this contention he relied on the aforesaid Andhra Decision *Manepalli Sattemma Vs. Manepalli Satyanarayana and Another*, which fully supports his contention.

We are however unable to accept the Andhra decision as laying down the correct law. Elaborate reasons were given by the Division Bench of this Court in *Bhaskar Moharana Vs. Arjun Moharana and Others*, as to why the office of village blacksmith is an office under the State. After having carefully read the reasoning in the aforesaid Andhra Case we do not think that the Orissa decision has taken any erroneous view. In course of discussion, Mr. Ramdas was constrained to admit that the lands annexed to the office belong to the State. He was unable to show that this is a private office. In fact the various classes of offices given in Section 3 of the Act are public offices with which the Act deals. There are different provisions referred to in the Orissa decision, as to how the collector and other Government officers exercise jurisdiction and control over the village artisans in the matter of their removal and how these lands are not alienable nor attachable. It is unnecessary to repeat the reasons given in that decision. Doubtless, there is no specific appointment or employment made on each occasion when the succession opens, but the Collector and other Government Officers exercise sufficient control in the matter of administration of the office and removal of the incumbent thereof in certain circumstances. We hold that the office of the village blacksmith is an office under the State within the ambit of Article 16(2) of the Constitution.

8. Section 12 itself indicates that at the time of succession to the office u/s 3 (4) no separate order of appointment is to be issued on each occasion. But the Section has the effect of having a perpetual statutory appointment by succession, confirming the office to the particular member of the family. In our view this itself amounts to appointment in respect of an office under the State. Section 12, is, therefore, directly hit by Article 16(2) of the Constitution. This aspect was not specifically referred to by the division Bench in the Orissa case. Our conclusion is wholly destructive of the argument advanced by Mr. Ramdas that there was no appointment to the office of the village blacksmith.

9. On the aforesaid analysis we hold that Bhaskar Moharana Vs. Arjun Moharana and Others, was correctly decided. But as we have already stated, the second Appeal is concluded by pure findings of fact.

10. In the result, the appeal fails and is dismissed with costs. Hearing Fee Rs. 100/- (Rupees one hundred only).

B.K. Patra, J.

11. I agree.