
(1995) 05 OHC CK 0019
In the Orissa High Court
Case No : Second Appeal No. 106 of 1985

Biddika Haddi

APPELLANT

Vs

Sidika Batnalu

RESPONDENT

Date of Decision : 15-05-1995

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 100
Orissa Estates Abolition Act, 1951 — Section 8(2), 8(3)

Citation : AIR 1996 Ori 79

Hon'ble Judges : P. Ray, J

Bench : Single Bench

Advocate : P.K. Misra, N.C. Pati, A.K. Nanda and B.N. Misra, for the Appellant;
B. Pal, E. Baug, S.C. Parija and D.P. Das, for the Respondent

Final Decision : Dismissed

Judgement

P. Ray, J.—The defendant-appellant has preferred this second appeal against the judgment and decree passed by the Additional District Judge, Jaypore affirming the judgment and decree passed by the learned Munsif, Gunupur in T.S. No. 29 of 1981.

2. The relevant facts as appear from the pleadings of the parties are stated hereunder:

a) Admittedly, one Suku Saura was the Barika of village Godibandha under the ex-Jaypore Estate and he was given the suit properties as Barik Service Inam land. He had two daughters, Laxmi and Biddika Hadi. Laxmi, the eldest daughter was married to one Kotowal Saura. Suku Saura kept the said son-in-law Kotowal Saura in his house. Biddika Hadi was married to one Bikia Kuru of village Karada. After the death of Suku Saura, Kotowal Saura was in exclusive possession of the suit property. With the abolition of Jaypore Estate in 1953 the Barika system was done away with. However, the suit land was settled with Kotowal by the authorities under the Orissa Estates Abolition Act giving him permanent and heritable right. His name was recorded in the record of rights during the survey

settlement. It is alleged in the plaint that after the death of Laxmi, Kotowal married the plaintiff who was then a widow of one Jagannaikulu and a son was born to them. After the death of Kotowal, the plaintiff continued in exclusive possession of the suit property. When she applied for mutation of the suit property in her name, the defendant objected, but in spite of the said opposition plaintiff's name was mutated in Mutation Case No. 162 of 1978. Against the said order of mutation the defendant preferred an appeal, which was also dismissed. It has been alleged that the defendant in order to grab the suit properties instituted a proceeding u/s 145, Cr. P. C. in which the Executive Magistrate erroneously held that the defendant was in possession of the suit property. As her title and possession were clouded by the said order of the Executive Magistrate, the plaintiff-respondent has instituted the present suit for declaration of her right, title and interest and for recovery of possession.

b) The defendant in her written statement denied that plaintiff was married to Kotowal. It has been alleged that the son of the plaintiff is not the son of Kotowal, but he is the son of late Jagannaikulu who was admittedly the husband of the plaintiff. The defendant has also claimed that she has been in possession and enjoyment of the suit land since the death of Kotowal in 1976.

3. The trial Court decreed the suit holding, inter alia, that the plaintiff is the married wife of Kotowal; that the suit lands were duly settled with Kotowal under the Orissa Estates Abolition Act and that the plaintiff has right, title and interest in the suit lands.

4. The defendant's appeal before the first appellate Court was also dismissed affirming the findings of the trial Court. It appears that in the first appellate Court the defendant raised further contentions that the settlement of the suit lands with Kotowal was invalid, illegal and that the suit lands having been settled with Kotowal u/s 7(1) of the Orissa Estates Abolition Act, 1951 (hereinafter referred to as. "O. E. A. Act"), the suit was barred u/s 39 of the said O. E. A. Act. The first appellate Court negated the said contention and confirmed the judgment and decree of the trial Court.

5. Before this Court, two questions have come up for consideration, firstly, whether on the evidence on record it can be held that the plaintiff is the lawfully married wife of Kotowal and secondly, whether the settlement of the suit lands with Kotowal was legal and valid in view of the provisions of the O.E.A. Act.

6. On behalf of the appellant Mr. A. K. Misra has contended that there being no evidence that the essential ceremonies required for a valid marriage were performed, both the courts below have committed error in holding that the plaintiff is the married wife of Kotowal. He has also pointed out the discrepancies in the evidence adduced on behalf of the plaintiff in support of his contention that the factum of the marriage has not been proved. He has relied upon the decisions reported in Rabindra Nath Dutta Vs. The State, and Santi Deb Berma Vs. Smt. Kanchan Prava Devi, . Mr. Misra has also pointed out that the first

appellate Court has not at all discussed the issue regarding disputed marriage and has not come to any independent finding of its own. He submits that as the final court of fact the first appellate Court was duty-bound to consider the materials on record before affirming a finding of the trial Court.

7. The first appellate Court has not discussed the materials on record separately, but it has found that the trial Court correctly assessed the evidence and came to the right conclusion that plaintiff is the wife of Kotowal. It would have been definitely better if the first appellate Court itself referred to the materials on record while affirming the finding but it cannot be said that it has not applied its mind to the materials on record. It appears that the first appellate Court accepted the reasonings given by the trial Court. In the facts and circumstances of the present case it cannot be said that the confirmation of the findings is perverse or unreasonable.

8. Since the death of Kotowal the dispute has been going on. The plaintiff applied for mutation of her name in place of Kotowal claiming to be his wife. The plaintiff's name was mutated on the basis that she is the wife of Kotowal. The said claim was contested by the defendant, but she was unsuccessful up to the appellate stage. In the voters' list Kotowal's name figured as the husband of the plaintiff. The Sarpanch, who was present at the time of marriage deposed as witness. It appears that the plaintiff has been recognised as the wife of Kotowal in the locality and her claim is not anything new or afterthought. In *Rabindra Nath Dutta Vs. The State*, which has been cited on behalf of the appellant, it has been laid down ---

"There is, of course, a strong presumption in favour of the validity of a marriage, if from the time of such marriage the parties are recognised by the people concerned as man and wife and such presumption applies also the question whether the formal requisites of a valid marriage ceremony were satisfied."

9. The decisions cited by Mr. Mishra were rendered in criminal cases in the context of alleged offence u/s 494 of the I.P.C. In order to hold an accused guilty of bigamy strict proof of alleged marriage is necessary and benefit of doubt, if any, is to go in favour of the accused. In those two cases the validity of the marriage was sought to be questioned on the ground of non-observance of essential ceremonies. In the present case defendant stated that there was no marriage at all. No case was put forward that marriage was invalid because of the absence of any essential ceremony. No question to that effect was put to plaintiff's witnesses who deposed that there was a marriage between Kotowal and the plaintiff. No such question was raised in any of the Courts below. The defendant-appellant cannot be permitted to raise such question which is primarily a question of fact, for the first time in the second appeal. The decision relied on by Mr. Misra cannot be made applicable to the present case. Thus, there is no reason to interfere with the concurrent finding of fact that the plaintiff is the wife of Kotowal.

10. The second contention that the suit land could not be settled on Kotowal u/s 8(2) of the O.E.A. Act is also not acceptable. It has been found by the Courts below that Suku Saura died in 1950 and after his death Kotowal started rendering the "Bariki Service" in lieu of which he was holding the disputed lands. It has also been held that Suku and after his death Kotowal was rendering personal service to the Jeypore Estate. Immediately before the date of vesting under O.E.A. Act Kotowal was rendering service either as a village servant or personal service to the Estate. In either case, Kotowal was entitled to get settlement of the land u/s 8(2) or 8(3) of O.E.A. Act. There is no dispute that on the eve of the date of vesting Kotowal was in actual possession of the suit lands and cultivating those. There cannot be any doubt that Kotowal was entitled to hold the suit lands as tenant under the State. In fact, Kotowal was accepted as a direct tenant under the State.

11. For the aforesaid reasons, the appeal is dismissed. The judgment and decrees of the Courts below are affirmed.

No order as to costs.