
(1986) 07 OHC CK 0004
In the Orissa High Court
Case No : Second Appeal No. 326 of 1978

Bogarpu Mahalakshmi

APPELLANT

Vs

Janardan Sahu (died) Laxminarayan Sahu and Others

RESPONDENT

Date of Decision : 07-07-1986

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 22 Rule 3
Orissa Estates Abolition Act, 1951 — Section 8

Citation : (1986) 2 OLR 223

Hon'ble Judges : G.B. Pattnaik, J

Bench : Single Bench

Advocate : B.L.N. Swamy, for the Appellant; P.K. Misra, for the Respondent

Final Decision : Dismissed

Judgement

G.B. Pattnaik, J.—Defendant No. 1 is the appellant against a confirming judgment. The suit lands were the inam lands and the recorded Inamdar was one Bogarpu Narasimhulu. Defendant No 1 is the widow and defendants 2 and 3 are the sons of the said Inamdar. Plaintiffs filed the suit for declaration of their right of occupancy over the suit lands on setting aside the settlement of the lands in favour of defendant No. 1 by the Collector under the Orissa Estates Abolition Act and for permanent injunction against the defendants from claiming rajbhag from the plaintiffs. According to the plaint case, the recorded Inamdar conferred right of occupancy in the suit lands on Ganapati, father of plaintiff No. 1, in the year 1944 and since then Ganapati has been in possession as an occupancy raiyat over the suit lands. Plaintiffs 2 and 3 are sons of brothers of Ganapati. After the death of Ganapati, the plaintiffs are in possession over the suit lands. In the year 1961, the lands vested in the State of Orissa and, therefore, the plaintiffs became the tenants order the State, as the rights of the Inamdar were extinguished. Defendant No. 1 notwithstanding the said vesting, claimed rent from the plaintiffs on the assertion that the lands have been settled in her favour by the Estate Abolition authorities and hence the present suit.

2. Defendant No. 1 denied the allegations made in the plaint and contended that the suit in question was not maintainable since the lands have been settled in his favour by the Estate Abolition Collector. It was further pleaded that the alleged irregularity in the matter of settlement of land cannot be gone into by the Civil Court in the suit.

After narrating the "findings of Courts below and contentions of parties His Lordship observed :

5. In this second appeal, Mr. B. L. N. Swamy appearing for the appellant, contends that the decision of this Court in Lalbihari Patnaik's case [1973(2) CWR 1026] basing on which the settlement in favour of defendant No. 1 has been said to be null and void, has been reversed by a later Full Bench decision of this Court in the case of Krupasindhu Misra and Another Vs. Gobinda Chandra Misra and Others, and if the ratio of the Full Bench decision is applied, then it must be held that there was no illegality in the matter of giving of notice and, therefore, it is a fit case to be remanded to the lower appellate Court to re-dispose of the appeal in accordance with the said Full Bench decision. But before going into the said question, another question requires to be answered and that is whether the entire appeal abates in view of the abatement of the appeal against respondent No. 1 for non-substitution of the deceased-respondent No. 1. By order No. 11, this Court ordered that the counsel for the appellant "does not want to take steps for substitution in place of the deceased-respondent No. 1. The question of abatement shall be taken up at the time of hearing of the appeal..." Mr. Swamy appearing for the appellant does not dispute that the second appeal abates as against deceased-respondent No. 1, but he contends that since the rights of respondents 1, 2 and 3 are distinct and divisible, the entire appeal would not abate. Mr, P.K. Misra, the learned counsel appearing for the respondents, on the other hand, contends that looking at the pleadings and nature of relief claimed as well as the findings which are sought to be challenged in this appeal, there is no manner of doubt that the entire appeal abates.

6. The law on the subject has been fully discussed in the decision of the Supreme Court in the case of The State of Punjab Vs. Nathu Ram, . In the aforesaid Supreme Court case, the land belonging to two brothers had been jointly acquired and on their refusal to accept the compensation, the matter had been referred to the arbitrator, The arbitrator had passed a joint award granting a higher compensation and during the pendency of the appeal, the appeal abated against one. The question which was before the Supreme Court was whether the appeal also abated as against the other or not. The Supreme Court held that the appeal against the remaining respondent could not proceed. It was held by Their Lordships.

"The result of the abatement of the appeal against Labhu Ram is therefore that his legal representatives are entitled to get compensation on the basis of this award, even if they are to be paid separately on calculating their rightful share in the land acquired, for which this compensation is decreed. Such calculation is

foreign to the appeal between the State of Punjab and Nathu Ram. The decree in the appeal will have to determine not what Nathu Ram's share in this compensation is, but what is the correct amount of compensation with respect to the land acquired for which this compensation has been awarded by the arbitrator. The subject-matter for which the compensation is to be calculated is one and the "same. There cannot be different assessments of the amounts of compensation for the same parcel of land. The appeal before the High Court was an appeal against a decree jointly in favour of Labhu Ram and Nathu Ram. The appeal against Nathu Ram alone cannot be held to be properly constituted when the appeal against Labhu Ram had abated. To get rid of the joint decree, it was essential for the appellant, the State of Punjab to implead both the joint decree-holders in the appeal. In the absence of one joint decree-holder, the appeal is not properly framed. It follows that the State appeal against Nathu Ram alone cannot proceed."

The question whether in a given case the entire appeal abates when the said appeal abates against one of the respondents has to be decided on the facts and circumstances of the case. The Courts have found but several tests and one of the tests is that the success of the appeal may lead to the Court's coming to a decision which will be in conflict with the decision between the appellant and the deceased-respondent and, therefore, it would lead to the Court's passing a decree which will be contradictory to the decree which has become final in respect to the same subject-matter between the appellant and the deceased-respondent.

Applying the ratio of the aforesaid Supreme Court decision as well as the tests referred to earlier, to the present case, there cannot but be any other opinion than that the entire appeal abates since the appeal has abated as against deceased respondent No. 1. This is a case where all the plaintiffs claim a joint interest in the property in question and further the prayer for setting aside the settlement in favour of defendant No. 1 is dependent upon the finding as to whether there was due compliance of Section 8 of the Orissa Estates Abolition Act or not. The Courts below have found that there has not been the due compliance inasmuch as the procedure required under the statute has not been followed. Unless this finding is reversed, the decision of the Courts below cannot be altered and this finding has become already final as against respondent No. 1. It would not be permissible for this Court to give contradictory findings on that aspect, particularly in respect of the self-same estates abolition case. In that view of the matter, in my considered opinion, it must be held that this second appeal abates as a whole and Mr. Swamy's contention, therefore, must be rejected.

7. Even otherwise, on merits also, Mr. Misra appearing for the respondents, is right in his submission that the lower appellate Court has come to a definite conclusion not relying on the earlier decision of this Court, but on the materials on record that defendants were not in khas possession of the suit lands on the

date of vesting. Since this finding is independent of the earlier decision of this Court, as a finding based on materials, the same finding cannot be altered. The settlement of a land under the abolition Act is dependent upon whether the intermediary was in khas possession on the date of vesting or not. Therefore, on the aforesaid finding that defendants were not in khas possession, the order of settlement cannot be sustained. I would not, however, dilate further on this issue since I have already held that the appeal itself abates as a whole.

8. In the result, the second appeal is dismissed, but in the circumstances, without any order as to costs.