
(1963) 11 OHC CK 0016
In the Orissa High Court
Case No : Misc. Appeal No. 81 of 1962

Brundaban Chandra Dhir

APPELLANT

Vs

Natabar Chandra Dhir

RESPONDENT

Date of Decision : 20-11-1963

Acts Referred:

Orissa Estates Abolition Act, 1951 — Section 6, 7

Citation : AIR 1965 Ori 74

Hon'ble Judges : R.L. Narasimham, C.J;S. Barman, J

Bench : Division Bench

Advocate : M.M. Das, for the Appellant; J. Rath, for the Respondent

Final Decision : Dismissed

Judgement

Narasimham, C.J.—This is an appeal by the judgment-debtor against the decision of the Executing Court dated 21-6-1962, directing the sale of item 34 of the list of properties attached to the decree in. O. S. No. 14/16 of 1947-49 dated 6-9-1951, for realising the decretal amount.

2. The decree-holder respondent obtained a maintenance decree against the then proprietor of Madhupur Estate and certain items of properties were charged, for payment of the maintenance amount. The decree is dated 22-10-1951 and item 34 of the list of properties attached to the decree relates to certain buildings standing on the Nijjot lands of the proprietor. The judgment and decree were taken up on appeal before this Court on First Appeal No. 10 of 1952 and First Appeal No. 17 of 1952, and a Division Bench of this Court by its judgment dated 24-2-1960 maintained the judgment of the lower Court, with the modification that the amount of maintenance should be reduced from Rs. 75/- to Rs. 50/- per month. The Madhupur Estate which, was an impartible estate was abolished and taken over by the Government of Orissa on 26-11-1952 under the provisions of the Orissa Estates Abolition Act. By virtue of Sections 6 and 7 of that Act certain buildings and other properties which were in the actual possession of the proprietor were deemed to have been settled with him subject to a payment of

fair and equitable rent to Government.

3. The executing Court (learned second additional Subordinate Judge) held that notwithstanding the abolition of the zamindari the decree-holder was entitled to sell item 34 mentioned in the list of properties attached to the decree as that item was also charged for payment of maintenance amount and he directed the release of other properties.

4. Mr. M.M. Das, for the appellant-judgment-debtor urged that when the decree was passed by the trial court item 34 consisted of Nijjot lands of the proprietor with a building standing thereon. But now it has undergone complete transformation into a different type of property by virtue of Section 6(i) of the Orissa Estates Abolition Act. The judgment-debtor now holds it as a mere tenant of Government liable to pay a fair and equitable rent. Hence he urged that, in the eye of law, item 34 of the list of properties attached to the decree has ceased to exist and the charge created on that item must also be held to have disappeared. In support of this contention he relied on some observations in *Rana Sheo Ambar Singh Vs. Allahabad Bank Ltd., Allahabad*, .

5. Mr. Rath for the respondent however referred to a subsequent decision of the Supreme Court in *Krishna Prasad and Others Vs. Gauri Kumari Devi*, (paragraph 19) where this point was further considered but no decision was given. But he invited our attention to a recent Full Bench decision of the Patna High Court reported in *Sidheshwar Prasad Singh and Others Vs. Ram Saroop Singh and Others*, where after considering the aforesaid two decisions of the Supreme Court the learned Judges held that where under Sections 4 and 6 of the Bihar Land Reforms Act, the bakast lands of the proprietor are deemed to have been settled on a raiyati basis, there is no change in the property and that if there was a mortgage or charge on the estate, prior to the date of vesting, there will be no bar to a suit or proceeding continuing in respect of such bakast lands also, notwithstanding the change in their character from bakast to raiyati lands. The language of Section 6(o) of the Orissa Estates Abolition Act is almost identical. Here also the building together with the site on which it stands, to the possession of the proprietor shall be deemed to be settled with him on the abolition of the estate.

6. Mr. Das further urged that the Patna Full Bench decision may itself be open to challenge before the Supreme Court and that it did not give a correct interpretation of the aforesaid decisions of the Supreme Court mentioned above. For the present we are not inclined to differ from the view taken by the Patna High Court, especially as the relevant provisions of the Orissa Act are similar to the corresponding provisions of the Bihar Act. Following that decision therefore we must hold that the charge on item 34 of the properties attached to the decree continues to exist and the decretal amount can be realised by sale of that property.

7. The appeal is therefore dismissed but there will be no order for costs.

8. Barman, J .: I agree.