
(1961) 12 OHC CK 0005

In the Orissa High Court

Case No : S.C. Appeal No"s. 20 and 21 of 1961

Budhi Panigrahi and Others

APPELLANT

Vs

Bhagirathi Swain and Others

RESPONDENT

Date of Decision : 22-12-1961

Acts Referred:

Constitution of India, 1950 — Article 133(1)

Citation : AIR 1962 Ori 159

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

Bench : Division Bench

Advocate : B.K. Pal, for the Appellant; A.G. and Government Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Barman, J.—This is plaintiff-appellants" petition under Article 133 of the Constitution for leave to appeal to the Supreme Court against the decision of a Division Bench of this Court,—in First Appeal No. 23 of 1955 and First Appeal No. 12 of 1956 which were heard analogously,—setting aside the decision of the trial court in the said Title Suits whereby the trial Court decreed the suits of the plaintiffs (petitioners herein).

2. The main point for consideration is the question of valuation which, according to the plaintiff-petitioners, is not less than Rs. 20,000/-.

For determination of the value of the subject-matter of the dispute, it is necessary to go into certain relevant facts which are hereinafter stated.

3. In the said two first appeals decided by this Court, the main points involved related to questions whether the lease in respect of suit lands by the zamindar of Dharakote Estate in the district of Ganjam in favour of the plaintiffs was in good faith and for valuable consideration or whether the said lease was void and inoperative as prohibited by Section 3 read with Section 4 of the Orissa Communal Forest and private Lands (Prohibition of Alienation) Act, 1948

(hereinafter referred to as the Orissa Act I of 1948).

4. The first appeal No. 23 of 1955 arose out of Title Suit No. 22 of 1951, the area of the suit lands being 15 acres. The first appeal No. 12 of 1956 arose out of Title Suit No. 9 of 1951, the total area of the suit lands being 114 acres. In both the suits the plaintiffs (petitioners herein) were the same. The plaintiffs' case was that by an unregistered lease dated October 23, 1956 executed by the Zamindar of Dharakote, the plaintiffs acquired the suit lands, the total area being 129 acres covered by the said two suits. On October 8, 1946 Dharakote Estate was released from the Court of Wards. According to the plaintiffs' case they paid Rs. 500/- as Bhatti to the Zamindar and a Patta was granted in favour of them and two others on October 23, 1948, thereafter one Bhajaram Swain younger brother of defendant No. 1, filed a petition to the District Collector for having the said lease declared void and inoperative under the said Orissa Act I of 1948; on August 13, 1949, the Collector passed an order declaring assignment of the suit lands by the said lease as void and inoperative on the ground that they were communal lands; the main target of attack in the suits was the said order of the Collector the plaintiffs' case being that the said order was without jurisdiction.

5. Accordingly, the plaintiffs filed the said Title Suits for declaration of their Title to the suit lands. Title Suit No. 22 of 1951 was valued at Rs. 7,600/- and Title Suit No. 9 of 1951 was valued at Rs. 4,100/-; both the said valuations were shown in the plaints.

6. The defence--taken in the suits,--was inter alia, that out of 114 acres covered by Title Suit No. 9 of 1951, 109 acres were unreclaimed and 5 acres reclaimed as shown in a schedule to the trial Court decree, their case being that defendants 3 and 2 in the suits reclaimed the northern 5 acres. With regard to the 15 acres covered by Title Suit No. 22 of 1951, the defence case was that they were reclaimed by the defendant No. 1 for over 12 years and were in possession of defendant No. 1 as occupancy raiyat. With regard to the said 109 acres of unreclaimed area mentioned in Title Suit No. 9 of 1951, the defence case was that it was all forest land and the plaintiffs had no right and the order of the Collector was valid, in fact, their case was that the neighbouring villagers had communal right in respect of the said 109 acres. As regards the impugned lease dated October 23, 1946, the defence case was that in fact it was granted in 1949 but antedated to October 1946 in order to avoid the prohibitory provisions of the said Orissa Act I of 1948. On these pleadings briefly stated, the learned Subordinate Judge accepted all the points of the plaintiffs and decreed the suit in their favour. In course of hearing of the said appeals, from the said decision of the learned Subordinate Judge, before a Division Bench of this Court, the learned counsel for the plaintiffs (petitioners herein) conceded that the position was indisputable that the lands in question were forest lands.

7. It is in this background of the case, the question for consideration is whether "the amount or value of the subject-matter of the dispute in the court of first instance and still in dispute on appeal was or is not less than twenty thousand

rupees" within the meaning of Article 133(1)(a) of the Constitution. The petitioners relied on a recent Full Bench decision of the Madras High Court where it was held that for ascertaining the value of the subject-matter in dispute for the purpose of article 133 of the Constitution and Section 110, CPC in the Court of first instance or in the proposed appeal,--it would be open to any party, be he the plaintiff or defendant, to go behind the valuation adopted in the plaint Or in the memorandum of appeal, as the case may be, and show the real value of the subject-matter in dispute, except where there has been a judicial adjudication of the correctness of the original valuation in such a way as to attract the principle or the rule of res judicata or where the party making the original valuation or the one adopting it had an option to give that value or the correct value and while exercising the option by giving one of such values he gained for himself an advantage or made, the opposite party suffer a detriment: Kuppanna Gounder and Others Vs. Peruma Gounder and Others, .

8. The petitioners submitted that they are not absolutely precluded from contending that their valuation as given in the plaints was wrong. But, in our opinion, the court will treat the plaintiff's admission in the plaints regarding valuation as a strong piece of evidence against them. The Madras Full Bench decide on the facts of that particular case, where the suit was valued by the plaintiffs at Rs. 9,650/-. They succeeded in the court of first instance. When the defendants filed appeals to the High Court they adopted that value for the purpose of payment of necessary court-fee for the appeals; the judgment of the High Court affirmed that of the trial court; in the petition filed by the defendants under Article 133 of the Constitution for grant of leave to appeal to the Supreme Court, the defendants stated that the aforesaid value, as estimated by the plaintiffs and even as adopted by them, was erroneous, and that the real value of the properties was and continued at all material times to be more than Rs. 20,000/-; it was found that the appeal involved the determination of a substantial question of law; it was contended that the defendants should not be allowed to go behind the value adopted by them in the appeals and show what the real value was. On these facts Madras Full Bench held that the constitutional or statutory right of appeal could not be curtailed by an erroneous statement as to valuation by the party seeking a certificate; but when the question of value of the subject-matter had to be ascertained, the rules of procedure and evidence might in certain cases, debar him from pleading and proving the true value thereof.

9. In the present case, the distinguishing feature is that it is not a case of erroneous valuation, as it was in the. Madras case. (After discussing the evidence the judgment proceeds :) It is thus clear from the evidence of the plaintiff No. 3, (P. W. 4) that the value of the suit lands which was the subject-matter of the dispute in the court of the first instance and still in dispute on appeal, was and is less than Rs. 20,000/-. The arguments,--on behalf of the petitioners for leave,--have no force, in view of the circumstance that, in the present case, it is not that merely notional or artificial value which was put in the plaints; but the actual

value was given in the plaints, as is evident from the statement of one of the plaintiff himself as P. W. 4 before the trial Court as aforesaid.

10. Thus, on the question of valuation, this case does not fall within Article 133(1) (a), nor is the case a fit one for appeal to the Supreme Court under Article 133(1) (c). The petition for leave to appeal to the Supreme Court therefore fails, and it is accordingly dismissed, but there will be no order for costs.

Narasimham, C.J.

11. I agree.