
(1995) 04 OHC CK 0014

In the Orissa High Court

Case No : Original Jurisdiction Case No. 164 of 1990

Chaini Das and Others

APPELLANT

Vs

Kanhai Charan Swain and Others

RESPONDENT

Date of Decision : 26-04-1995

Acts Referred:

Orissa Consolidation of Holdings and Prevention of Fragmentation of Land Act, 1972 — Section 51

Orissa Estates Abolition Act, 1951 — Section 6, 7, 8

Citation : (1995) 2 OLR 486

Hon'ble Judges : S. Chatterji, J; R.K. Patra, J

Bench : Division Bench

Advocate : B.N. Mohanty, J.K. Bastia, S.C. Mohanty, R.N. Panda, R.K. Nayak, V. Narasingh and B.B. Bhuyan, for the Appellant; A.G.A. and G.C. Jena, K.C. Kar, S.K. Moharana and A. Deo for O.Ps. 1 to 3, K.N. Jena, B.B. Jena and D.K. Mohapatra for O.Ps. 4 and 5 and S.K. Nayak-1, R.K. Kar, B.K. Nayak and P.K. Patra for L.R. of O.P. 6, for the Respondent

Final Decision : Allowed

Judgement

S. Chatterji, J.—The present writ application at the instance of the petitioners Chaini Das and two others challenges the impugned order dated 8th June, 1989 in revision made by the Commissioner of Consolidation, Bhubaneswar in R. C. No. 509 of 1989 arising out of the orders of the Deputy Director of Consolidation, Kendrapara dated 4-2-1989 in Appeal Case No. 282 of 1987 u/s 12 of the Orissa Consolidation of Holdings and Prevention of Fragmentation of Land Act, 1972 (hereinafter referred to as of "the Act") confirming the common order dated 6-11-1987 relating to village Pokhariapada under Pattamundai police station in Objection Case Nos. 51, 52 and 53 of 1983. The revision u/s 36 of the Act refers to certain salient facts in as much as the disputed lands were recorded in the name of Sri Gopinath Jew marfat Lokanath Das and Ors.. It is recorded that one Sunakar Das, successor of Raghunath Das and Dadhiram Das son of Chhayadhar Das by registered deeds of lease dated 7-2-1959 and 14-1-1961 leased out a

portion of the suit land permanently in the name of one Sudarsan Sarangi who by registered sale deed dated 23-9-1961 transferred a portion of the suit land to one Paramananda Khandai. Such details of transfer have been referred to and dealt with. The revisional authority having considered the facts of the case and the orders of the authorities below observed that the opposite parties have admitted that the heirs and legal representatives of the recorded marfatdars have not filed any claim under the provisions of the Orissa Estates Abolition Act after vesting. The property has not yet been settled either in the name of the deity or in the name of the marfatdars. By referring to a decision reported in 1967 CLT 655 (Narasingha Charan Rai and Anr. v. Radhagobinda Dev and Ors.) and Kanaka Barikani Vs. Chandra Sekhar Mahaprabhu and Others, , the revisional authority concluded that an intermediary has no right to maintain a suit after vesting without working out the remedies available under the Orissa Estates Abolition Act. Upon the aforesaid premises, it has been found that the claim of the opposite parties before the consolidation authorities is in the nature of a suit as the same involves determination of right, title and interest over the suit land. Thus a conclusion has been drawn as if the opposite parties having not filed any claim for settlement of the suit land after vesting under the provisions of the Orissa Estates Abolition Act, it must be held that the stand taken by the opposite parties is not sustainable and the suit-land cannot be recorded in the name of the opposite parties on the basis of anterior title. This conception appears to be thoroughly misconceived. Title is never extinguished unless it is determined in accordance with law. Section 6 of the Orissa Estates Abolition Act, 1951 lays down that with effect from the date of vesting, all homesteads comprised in an estate and being in the possession of an intermediary on the date of such vesting, and such buildings or structures together with the lands which they stand, other than any buildings, used primarily as offices or kutcheries or rest houses for estate servants on duty as were in the possession of an intermediary at the commencement of this Act and used as golas (other than golas used primarily for storing rent in kind), factories or mills for the purpose of trade, manufacture or commerce, or used for storing grains or keeping cattle or implements for the purpose of agriculture and constructed or established and used for the aforesaid purpose before the 1st day of January, 1948, shall, notwithstanding anything contained in this Act be deemed to be settled by the Government with such intermediary and with all the share-holders owning the estate who shall be entitled to retain possession of such homesteads or such buildings or structures together with the lands on which they stand, as tenants under the State Government subject to the payment of such fair and equitable ground rent as may be determined by the Collector in the prescribed manner. There are certain provisos as conditions to the said Act. Similarly Section 7 of the Act deals with certain other lands in khas possession of intermediaries to be retained by the Government on payment of rent as raiyats having occupancy right. Section 8 in particular deals with the continuity of tenure of tenants. It is held down that any person who immediately before the date of vesting of an estate in the State Government was in possession of any holding as

a tenant under an intermediary shall, on and from the date of vesting be deemed to be a tenant of the State Government and such person shall hold the land in the same right and subject to the same restrictions and liabilities as he was entitled or subject to immediately before the date of vesting.

2. Sections 6, 7 and 8 of the Orissa Estates Abolition Act provides the incidences of tenancy after vesting of the right of the intermediary in the State. Here in the instant case, there are certain documents of title relating to lease and transfer. It is a settled principle of law that if the documents are void in nature, the same need not be avoided. If there are certain documents which are voidable in nature, the same have got to be avoided by appropriate proceeding before the competent authority. Section 51 of the Orissa Consolidation of Holdings and Prevention of Fragmentation of Land Act, 1972 bars jurisdiction of the Civil Court to entertain any dispute which can be decided by an authority empowered by the present Act. Section 8 of the CPC envisages the jurisdiction of the Civil Court and ouster of Civil Court's jurisdiction is not inferred until they are specifically prohibited under the statute. In the instant statute, there is a definite bar to entertainment of the suit. The decisions relied upon by the revisional authority and referred to by Mr. Jena before us indicate the principles of law by drawing inspiration from the ratio found out in the case reported in *Sabitri Devi Thirani Vs. Satya Narain Mandal*, . It is provided therein that a person having grievances cannot approach the Civil Court for adjudication in respect of matters which would be decided under the provisions of the special statute. Such reference has nothing with regard to the adjudication of the present dispute. The revisional authority has observed, *inter alia*, that by granting of rent receipts notwithstanding any other fact, tenancy is automatically presumed. By these erroneous approaches the revisional authority has disposed of the matter which, in our considered view, is not permitted in law. It has to be considered in the proper perspective whether there is continuity of the tenancy. If there is no continuity of the tenancy any settlement *per se* however ante-dated cannot confer any special right. Tenancy can be created by a contract which is by way of offer and acceptance. If there is no other document, certainly by granting rent receipt by the land-lord tenancy can be presumed. In the present facts and circumstances of the case, drawing of such proposition is wholly unwarranted and uncalled for. The parties have referred to several documents of title. There is a claim of continuity of the tenancy. There is a counter claim to the settlement of right. The bar of limitation has also been raised. All these questions have got to be considered by the revisional authority in accordance with law. We cannot substitute the decision of the revisional authority by giving an independent decision on appreciation of the materials on record and the facts in support thereof. The writ Court is essentially to examine the decision making process. Although, it is fervently argued before us that the revisional authority has not committed any error of law in deciding the case and his ultimate conclusion may be sustained although the reasonings may not be proper or the language may not be appropriate as it may deserve mentioning, without referring to the

language and expression, we give much importance to the concept of law and appreciation of the materials on record to decide the matter in the right way. We find that the revisional authority has not considered the effect of the settlement, as to the right of the authority to grant such settlement at the material point of time. The revisional authority has also not considered the nature of the documents on the basis of which the claim and the counter claim are based. The revisional authority has not also considered the proper application of Sections 6, 7 and 8 of the Orissa Estates Abolition Act in the right perspective. For the foregoing reasons, we are of the view that the matter should be reheard by the revisional authority afresh by giving opportunity to the parties concerned and come to a fresh decision in the light of the discussions, as indicated above. Accordingly we allow this writ application, set aside the impugned order. The matter is sent back on remand to the revisional authority and it is expected that, the revisional authority will expeditiously dispose of the matter preferably within a period of six months from the arrival of the records and communication of the order. If any of the petitioners and/or the opposite parties, is reported dead in terms of the office note, their names be expunged. The revisional authority will consider the question of necessary and proper parties at the time of effecting adjudication.

3. No order as to costs.

R.K. Patra, J.

4. I agree.