

(2005) 09 OHC CK 0036
In the Orissa High Court
Case No : F.A.O. No. 91 of 2002

Chennuru Gouri Varaprasad Babaji

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 28-09-2005

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 24, Order 43 Rule 1
Orissa Estates Abolition Act, 1951 — Section 6

Citation : (2006) 101 CLT 53 : (2005) 2 OLR 618

Hon'ble Judges : A.S. Naidu, J

Bench : Single Bench

Advocate : Bijan Ray, B.K. Panda and Vijaya Shree, S.K. Dash, for the Appellant;
Addl. Standing Counsel, for Respondent Nos. 1 to 2 and P.K. Mishra, for the Respondent

Judgement

A.S. Naidu, J.—The judgment dated 13.8.2002 passed by the Addl. District Judge, Gajapati, Parlakhemundi, in Title Appeal No. 17/95 setting aside the judgment and decree passed by the Civil Judge (Sr. Division), Parlakhemundi, in T.S. No. 25/92 and remanding the case to the lower Court for retrial is assailed by the plaintiff in this appeal filed under Order 43 Rule I(u) of the Code of Civil Procedure.

2. The appellant as plaintiff filed T.S. No. 25/92 in the Court of Civil Judge (Senior Division), Parlakhemundi, inter alia, praying for declaration of title and permanent injunction. The subject matter of the suit is a Bungalow-cum-residence locally called as "Dewan Bungalow" situated in Parlakhemundi Municipal, Ward No. 16, Municipal Survey No. 1146 appertaining to Sabik Plot No. 105 of Mouza Kaviti Khaspa, measuring Ac. 2.094 cents. The suit premises originally belonged to Ex-Maharaja of Parlakhemundi Late Krushna Chandra Gajapati Narayan Deo. After his death in the year 1975 Gopinath Gajapati Narayan Deo inherited the Bungalow. It is pleaded in the plaint that after abolition of the Parlakhemundi estate in consonance with the provisions of Orissa Estates Abolition Act, 1952 and after the litigation cropping up from the said

notification came to an end, Late Maharaja submitted an application u/s 6 of the O.E.A. Act for settlement of the disputed properties alongwith other properties in his favour. According to the averments in consonance with the said application the properties in question were settled in favour of the Ex-intermediary. In the year 1965 the property was furnished as security to the Governor of Orissa. Several averments are also made in the plaint to establish the assertion that Late Maharaja owned and possessed the said property as an absolute owner, before vesting and also after vesting of the estate. In the year 1975 the property was sold to one Bhaskar Rao, father of the plaintiff/appellant. In 1976 the said Bhaskar Rao initiated a house rent control proceeding to evict a department of the Government which was occupying the bungalow in rent and in consonance with the decree passed the department was evicted from the property. It is stated Bhaskar Rao and after him his son the present plaintiff asserted various rights of ownership over the property till 1991 when a proceeding under the Orissa Public Land Encroachment Act was initiated. Being aggrieved the plaintiff was constrained to file the suit.

Defendant Nos. 1 and 2, i.e. State of Orissa and Tahasildar contested the suit by filing a written statement. The stand taken in the written statement in short was that the land and the building which are the subject matter of the suit were not homestead lands. It never belonged to Krushna Chandra Gajapati Narayan Deo. The same was an Anabadi plot and the Ex-Maharaja constructed a building over a portion of the suit land for his estates servants. The estate vested in consonance with the OEA Act, 1951 in the year 1953. According to the notification the property vested with the State free from all encumbrances. The Ex-intermediary never claimed the suit land for settlement and no application u/s 6 of the OEA Act was filed. All other assertions made in the plaint were also strongly repudiated. It is contended that the State has no knowledge with regard to the decree passed in the house rent control case and as the property belongs to the State and the plaintiff has encroached upon it, a proceeding under the Orissa Prevention of Land Encroachment Act was rightly initiated.

3. Defendant No. 3, the legal heir of Maharaja, Parlakhemundi, filed a separate written statement through his general power of attorney holder. In the written statement, it is asserted that the Bungalow and its premises was under the khas possession of the Maharaja. The same did not vest with the Government of Orissa in consonance with the OEA Act. The same being under khas possession of the Maharaja, deemed to have been settled in his favour u/s 6 of the OEA Act and this fact was intimated by the then Tahasildar by letter dtd. 25.7.1971. That the lands were settled in favour of the Ex-intermediary is corroborated by the fact that the Government accepted the said properties as security. The alienation of the properties in favour of Bhaskar Rao by a registered sale deed is admitted. Defendants 4, 5 and 6 filed a separate written statement supporting the stand taken by the plaintiff. On the basis of the pleadings, the trial Court framed as many as seven issues.

4. To substantiate his case, the plaintiff examined one witness and exhibited fourteen documents. Defendants 1 and 2 also examined one witness and exhibited four documents. The trial Court for the sake of convenience dealt with Issue Nos. 1 and 4 together. For the sake of convenience, the said two issues are quoted herein below:

(1) Whether the suit premises originally belonged to Maharaja Parlakhemundi, Krushna Chandra Gajapati Narayan Deo ?

(4) Whether the suit property vested with the State of Orissa and Krushna Chandra Gajapati Narayan Deo had no right, to sale the land to the plaintiff ?"

The trial Court elaborately dealt with the evidence both oral and documentary. It has also taken note of different provisions of Orissa Estate Abolition Act and the Orissa Survey and Settlement Act, 1952. It has referred to the documents exhibited and vividly discussed the same. On the basis of such discussions the Trial Court came to hold as follows :

Therefore, in view of the provisions of Section 6 of the said Act and the documents filed coupled with the oral evidence adduced, I have no hesitation to hold that the suit property is not the property of the State of Orissa (D-1). Therefore, Gopinath Gajapati Narayan Deo, the heir apparent of late Krushna Chandra Gajapati, had a legal right to transfer, by way of sale, the suit property in favour of the plaintiff's late father. The issues are answered accordingly.

5. The trial Court after discussing the evidence on other issues decreed the suit land and declared the right, title and interest and possession of the plaintiff and the defendants 4, 5 and 6 on the suit schedule property. Defendants 1 and 2 were permanently enjoined from dispossessing the plaintiff and defendants 4, 5 and 6 out of the suit properties.

6. Being aggrieved the State of Orissa preferred an appeal before the Addl. District Judge, Gajapati, Parlakhemundi, which was registered as T.A. No. 17/95. The appellate Court after discussing the facts entertained doubt with regard to some of the documents being Exts. 1 and 1(a) and observed that as defendants have raised objection against admissibility of these documents, the learned lower Court should not have admitted the same as evidence. Further more before seeking admission of these documents the plaintiff did not make out such a case in which such secondary evidence of the original documents could have been adduced. With regard to Exts. 2 and 3, the appellate Court observed that though the said documents have been marked as exhibits without objection but in paragraph 4 of the written statement defendants have pleaded that they are not admitting the documents referred to in paragraphs 4 and 5 of the plaint to be genuine. The appellate Court further observed that the learned Tahasildar before addressing the letter to the Revenue Officer must have verified the documents and records wherefrom it could be ascertained that the suit property was settled with the Ex-intermediary. On the basis of such observation, the appellate Court set aside the judgment and decree and remanded the suit to the lower Court for

retrial. The said judgment is assailed by the plaintiff-appellant before this Court.

7. According to Mr. Roy, learned Senior Advocate appearing for the plaintiff the lower appellate Court acted illegally and with material irregularity in not disposing of the appeal on the basis of the materials available on record. It is further submitted that the evidence, both oral and documentary have been adduced in extenso by both the parties and as such remanding the matter at this stage to the Court below would cause prejudice to the plaintiff. It is further submitted that such remand would give further opportunity to the parties to fill up the lacuna which should be prevented at all costs.

8. Learned Counsel for the State on the other hand submits that some documents which should not have been exhibited have been admitted in evidence. It is further submitted that the documents exhibited are not genuine and are created for the purpose of the litigation.

9. I have heard learned Counsel for the parties at length. I have also examined the exhibits and other materials available as well as the judgment passed by both the Courts below meticulously. Law is well settled that the evidentiary value of each exhibit is to be considered in the light of the entirety of the evidence adduced in the case. Since some of the documents which should not have been admitted in evidence have been exhibited, cannot be a ground to remand the suit for de novo disposal. The evidentiary value of the said documents should be considered alongwith other documents. That apart, Order 41, Rule 24 CPC clearly stipulates that the appellate Court shall make all endeavour to decide a case and pronounce the judgment where the evidence upon the record is sufficient to enable the said Court to arrive at a conclusion. The suit filed in the year 1992, was disposed of in 1995. Each of the parties got examined one witness and on behalf of plaintiff 14 documents were exhibited and on behalf of the defendants 4 documents were exhibited. Both parties were given adequate opportunity to establish their case by adducing cogent evidence. Considering the evidence, both oral and documentary, the trial Court answered each of the issues. During pendency of the appeal also no petition was filed for adducing additional evidence. After going through the materials on record and hearing the parties, this Court feels that this is one of the cases where the parties have adduced evidences in extenso and the evidences which have been adduced are sufficient enough to finally determine the suit on its own merit.

10. Order 41, Rule 24 mandates that before remanding, the appellate Court should at the first instance make an endeavour to give a finding on the basis of the materials on record and dispose of the appeal after giving reasons either accepting or rejecting the finding given by the lower Court. 1998 (I) OLR 33 It would be proper for the Court to remand a case only when some further enquiry is necessary to be made and not when the appeal can be disposed on available evidence.

11. In view of the aforesaid clear position of law, I set aside the impugned

judgment and remand the matter to the lower appellate Court with a direction to the said Court to analyse the evidence already adduced and decide the issues on the basis of the evidence, both oral and documentary.

12. In view of the fact that the suit relates back to the year 1992 and thirteen years have passed, all endeavour shall be made by the appellate Court to dispose of the suit as expeditiously as possible.

Lower Court record be sent back immediately.

Parties to bear their own cost.