
(2017) 10 OHC CK 0004

In the Orissa High Court

Case No : 448 of 2001

Chitra Deo, & Ors.

APPELLANT

Vs

Orissa Gujarati Samaj, & Ors.

RESPONDENT

Date of Decision : 23-10-2017

Acts Referred:

[Evidence Act, 1872](#), [Section 79](#) -
Presumption as to genuineness of certified copies

Citation : (2017) 10 OHC CK 0004

Hon'ble Judges : A.K.Rath

Bench : SINGLE BENCH

Advocate : Soumya Mishra, R.P. Mohapatra

Final Decision : Dismissed

Judgement

1. This is an appeal by the plaintiffs against the judgment and decree dated 20.10.2001 and 8.11.2001 respectively passed by learned 1st Ad hoc Addl. District Judge, Bhubaneswar in T.A No.31/4/14 of 2001/1999 reversing the judgment and decree dated 30.1.1999 and 12.2.1999 respectively passed by learned Civil Judge (Senior Division), Bhubaneswar in O.S No.309 of 1988.

2. Father of appellant nos.2 to 4 as plaintiff instituted O.S No.309 of 1988 in the court of the learned Civil Judge (Senior Division), Bhubaneswar. Case of the plaintiff is that pursuant to the order dated 17.2.1949 passed by the S.D.O., Khurda in Waste Land Lease Case No. 791 of 1948-49, Ac.0.645 dec. of land appertaining to Sabik Plot No.280 in Mouza-Nayapalli was leased out in his favour. He executed a "Bemiadi Kabuliyat" on 22.2.1949. He paid "Salami" and became stitiban raiyat. He remained in possession over the lease hold land. He had raised temporary structure over the same. It was further pleaded that he was a Government employee. He could not know the settlement proceeding in the year 1962 as a result of which, the land was included in Khata No.385, Plot No.456 of Mouza- Nayapali with kissam "Chhot Jungle". He sold a portion of land to three persons. During settlement operation, parcha was prepared in his name.

But then, the land was recorded in the name of P&S Department with a direction that aggrieved person may establish claim in rent camp. Accordingly, he appeared and showed his papers to the settlement officer. The settlement officer after enquiry noted his possession. But then, the khata was kept in Government name. It was further pleaded that in 1962 settlement, defendant no.1 allotted Ac.0.490 dec. of land to defendant no.2 and Ac.0.250 dec. of land to defendant no.3 covering his entire lease hold land. He along with the purchasers filed T.S. No.31 of 1985 in the court of learned Sub- Judge, Bhubaneswar for declaration of title, confirmation of possession and in the alternative for recovery of possession. Since the suit was found to be defective for mis-joinder of parties, the same was withdrawn with a permission to file a fresh suit. Accordingly, he filed the suit for a declaration of title and possession in respect of Schedule-A land, recovery of possession in the event he has been dispossessed and for a declaration that the allotment of land in favour of defendant nos.2 and 3 as illegal and void.

3. Defendant no.1 entered appearance and filed a written statement denying the assertions made in the plaint. Case of the defendant no.1 is that the original plaintiff had executed a Kabuliyat.

The same was not a lease. No lease deed was executed in favour of the plaintiff. No demarcation of the land had been made. No "Salami" was paid. The total extent mentioned in the so-called Kabuliyat differed from the suit schedule property. In the application dated 29.7.1968 addressed to the Estate Officer, the plaintiff applied for plot of land in Nayapali for construction of a residential building. The proceeding was kept in abeyance. He could not get the plot allotted to him. He filed an affidavit on 19.11.1970 stating that neither he nor any member of his family own or possess any residential site in Bhubaneswar. He was not a stitiban raiyat in respect of the suit land. He had no right, title and interest over the suit land. The suit land was recorded in the name of the G.A Department as "Chhot Jungle" in the ROR published in the year 1962. He had suppressed the facts stated in O.S.No.31 of 1985 that he was having a plot in Sahid Nagar and settled there. The plaintiff had fraudulently sold the suit land to others without any valid title. The plots had been allotted to defendants 2 and 3 on 21.12.1981 and 21.8.1983 respectively.

4. Defendant no.2 filed a written statement contending, inter alia, that the suit land was never leased out by the S.D.O. in favour of the plaintiff. No lease hold right could be conferred on the plaintiff by execution of Kabuliyat. Area has not been specifically mentioned in the Kabuliyat. The plaintiff was not a Government employee. The plaintiff influenced the settlement officials to record his possession over the suit land. The plaintiff had not acquired occupancy rayati right over the suit land. The plaintiff was not in possession over the suit land. He had not paid salami to the State. It is apt to state here that during pendency of the suit, the sole plaintiff died, whereafter his legal heirs have been substituted.

5. On the inter se pleadings of the parties, learned trial court framed as many as eleven issues. Both parties led evidence, oral as well as documentary, to

substantiate their case. The suit was decreed. Defendant no.2 filed appeal before the learned District Judge, which was transferred to the learned 1st Ad hoc Addl. District Judge, Bhubaneswar and re-numbered as T.A No.31/4/14 of 2001/1999. The same was allowed.

6. The second appeal was admitted on the substantial questions of law enumerated in Ground Nos.A, B, C, D, E and I. The same are :

"A. When the suit schedule land was leased out in favour of the plaintiff in the year 1949 much prior to the enactment of the Orissa Government Land Settlement Act and Ext.A "Bemiadi Kabuliyat" was executed by the plaintiff acknowledging receipt of the lease and Ext.2 copy of the waste land lease registered maintained by Khasmahal authority i.e. S.D.O., Khurda shows payment of "Salami" in respect of the lease hold land, whether the learned lower appellate court is justified in disbelieving Ext.1 and 2 as proof of valid lease conferring right, title, interest and possession in favour of the plaintiff.

B. When Ext.1 is a registered document acknowledging the receipt of lease by the plaintiff whether the learned court below erred in disbelieving the same only on the ground that no Govt. official has signed on it.

C. When deft. No.1 the State has not specifically denied nor there is any other admissible evidence on record disputing the grant of lease of the suit schedule land in favour of the plaintiff and Ext.2 duly corroborates Ext.1 whether the impugned judgment and decree is sustainable in the eye of law.

D. When the State in its own document vide Ext.2 has admitted that Salami has been paid by the plaintiff creating a lease hold right in favour of the plaintiff over the suit schedule land and lease having been granted by the khasmahal authority as per the executive instructions prior to enactment of the Govt. Land Settlement Act confers stitiban tenancy right in favour of the lessee, whether the impugned judgment and decree is sustainable in the eye of law.

E. When as per Sec.79 of the Indian Evidence Act, the entries made in a certified copy of a document bears the presumption of its correctness and Exts.2,3,4,5,6,9,10 and 11 all are documents prepared by the Govt. officials in discharge of their public duty overwhelmingly establishes the possession of the plaintiff over the suit schedule land and no contrary admissible evidence was adduced by the defendants to rebut the same, whether the learned lower court is justified in reversing the judgment and decree of the learned trial court.

I. Whether the learned court below has erred in law in discarding Ext.3,4,5,6,9,10 and 11 which are prepared by public officials in due discharge of their public duty and carries the presumption of correctness until the contrary is proved by the person who disputes the same.

7. Heard Mr. Soumya Mishra, learned advocate on behalf of Mr. S.P. Mishra, learned Senior Advocate for the appellants and Mr. R.P. Mohapatra, learned Addl. Government Advocate for the respondents.

8. Mr. Mishra, learned counsel for the appellants, submitted that prior to coming into force of the Orissa Government Land Settlement Act, 1961, there was no codified rules for granting lease of Government land in the State of Odisha except the Bihar Odisha Government Estate Manual, 1919, which repealed the Bengal Government Estates Manual, 1902. Only a set of Government orders and executive instructions were made available in the form of lease principles. The land appertaining to Sabik Plot No.280, Ac.0.645 Mouza-Nayapalli was leased out in favour of the plaintiff pursuant to the order dated 17.2.1949 passed by the S.D.O., Khurda in Waste Land Case No.791 of 1948-49. After delivery of possession, he had executed "Bemiadi Kabuliyat" dated 22.2.1949 in favour of Government as a form of acceptance of lease. Execution of registered "Bemiadi Kabuliyat" by the plaintiff in favour of the State Government manifests the fact that lease was granted and the deed to that effect was executed by the competent authority of the State Government in favour of the plaintiff pursuant to the order dated 17.2.1949 passed in Waste Land Case No.791 of 1948-49 and the same had been duly acknowledged by the plaintiff. Bemiadi Kabuliyat is in the nature of a counterpart of a lease and as such it is lease. "Kabuliyat" being a counterpart is included in the purview of lease and signifies the existence of lease between the parties therein. He further submitted that defendant no.1 had admitted about execution of Ext.1-Kabuliyat which corroborates to Ext.2-copy of Waste Land Lease registered maintained by the Tahasildar. There was no specific pleading in the written statement denying the grant of lease by the S.D.O in favour of the original plaintiff. The Tahasildar had acknowledged the execution of the lease. There was a lease deed between the parties with respect to the suit land. Salami was paid by the plaintiff, which was duly received by the State. He further submitted that the lease document had been misplaced due to separation of offices between Khurda and Bhubaneswar for which record had not been corrected. Ext.4, 10 and statement of P.W.1 manifest the possession of the original plaintiff over the suit land. To buttress his contention, he relied on the decisions of the apex Court in the case of Asa Ram and another v. Mst. Ram Kali and another, AIR 1958 SC 183, Tiruvenibai and another v. Lilabai, AIR 1959 SC 620 and Rajendra Pratap Singh v. Rameshwar Prasad, AIR 1999 SC

37.

9. Per contra Mr. Mohapatra, learned AGA submitted that no lease deed was executed by the State of Orissa in favour of the plaintiff. The plaintiff had not paid Salami to the State Government. The settlement ROR had been finally published in the name of the State Government. The plaintiffs have no right, title and interest over the suit land. The suit land was leased out in favour of the defendants 2 and 3. The plaintiff had clandestinely sold some portion of the land to the outsiders without valid title.

10. Law Lexicon by P. Ramanatha Aiyar defines "Kabuliyat" as

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- a) An "acceptance" form or transfer of land meant in writing;
- b) The counterpart of a revenue lease;
- c) A written agreement signifying assent;
- d) The document in which a prayer of revenue;
- e) Whether to the Government, the Zamindar, or the farmer expresses his consent to pay the amount assessed upon his land.

Purna Chandra Odia Bhasakosha by G.C Praharaj defines "Bemiadi" as "for indefinite period".

11. The question does arise as to whether any title had been passed to the plaintiff by Bemiadi Kabuliyat. Bemiadi Kabuliyat is an unilateral document said to have been executed by the plaintiff. Though the plaintiff has placed much reliance to Waste Land Lease Case No. 791 of 1948-49, but then no lease deed was executed between the State of Orissa and the plaintiff. Waste Land Lease Case was registered on the basis of the affidavit filed by the plaintiff that he had no land in Bhubaneswar. But then, the plaintiff is the owner of a plot in Sahid Nagar. On the basis of the false affidavit, the order was passed. However, no lease deed was executed. The plaintiff woke up from deep slumber and agitated the claim. The settlement ROR was published in favour of the Government. The State was the paramount owner of the land. The State leased out the land in favour of defendants 2 and 3 on 21.12.1981 and 21.8.1983 respectively. The plaintiff had neither paid Salami, nor rent to the State Government. Thus the irresistible conclusion is that no title had passed to the plaintiff on mere execution of Bemiadi Kabuliyat.

12. The decisions cited by Mr. Mishra are distinguishable on facts. In Asa Ram (supra), Kabuliyat was executed by the lessee in favour of lessors. But then the latter did not execute any instrument in favour of the lessee. It was contended that the lessee could not claim the status of tenant solely on the strength of Kabuliyat which was only unilateral undertaking. The evidence on record showed that the lessors had accepted the Kabuliyat and received rent. On the aforesaid facts, the apex Court overruled the contention of the lessee that the lessee could not claim the status of tenant. The same view was taken in Rajendra Pratap Singh (supra). But in the instant case neither Kabuliyat was accepted nor Salami or rent was paid to the State. On a bare reading of the decision in the case of Tiruvenibai (supra), it is clear that the facts are totally different. The substantial questions of law are answered accordingly.

13. A priori, the appeal is dismissed. There shall be no order as to costs.