

(1968) 08 OHC CK 0035

In the Orissa High Court

Case No : Civil Revision No. 201 of 1962

Damodar Mahapatra and Another

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 14-08-1968

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 10, Order 1 Rule 10(2), Order 1 Rule 8, 115, 9

Vires of Orissa Prevention of Land Encroachment Act, 1954 — Section 10, 14, 3, 4, 5

Citation : (1968) 34 CLT 956

Hon'ble Judges : G.K. Misra, J

Bench : Single Bench

Advocate : M. Mohanti, for the Appellant; Standing Counsel for Opp. Party 1, R.C. Patnaik and B. Harichandan for Opp. Parties 7-8, for the Respondent

Final Decision : Dismissed

Judgement

G.K. Misra, J.—Plaintiffs are the Petitioners. Their case is that their father late Bhagabat Mahapatra was the Karta of the joint family consisting of the Plaintiffs and Defendant-2. Defendants 3 to 6 are the sisters of the Plaintiffs. The disputed land is recorded as waste land under the Khurd a Khasmahal of the State of Orissa (Defendant-2). The Plaintiffs' father and the Plaintiffs reclaimed the disputed land and used it as their Bari land for more than 30 years. In the settlement, which has not yet come final, their possession has been noted as Jabar Dakhal. In a proceeding under the Orissa Prevention of Land Encroachment Act, 1953 (Orissa Act XV of 1951), hereinafter to be referred to as the Act, the Collector of Puri erroneously held that the suit land was Gochar. The Collector's order was upheld by the Revenue Divisional Commissioner in Revision Case No. 92 of 1958-59. Plaintiffs filed the suit u/s 14 of the Act being aggrieved by the order of dismissal in the revision case on the assertions that the suit land is not Gochar or the communal land and the provisions of the Act have no application to the suit land and the orders passed are illegal, void and ultra vires. Plaintiffs prayed for declaration of title as occupancy tenants and for confirmation of

possession and for a declaration that the orders passed in Land Encroachment Case No. 14 of 1956.57 and in Revision Case No. 92 of 1958.59 are illegal, ultravires and not binding on the Plaintiffs and the suit property.

2. Defendant-1 filed written statement asserting that the disputed plot is recorded as Puruna Padia and is being used as Gochar in the locality since long. The Plaintiffs' house being close to the disputed plot, their father unauthorisedly encroached upon the disputed portion about a year back. When it was detected by the Naib Tahasildar of Begunia, a proceeding was started against him under Sections 5 and 6 of the Act in the year 1956. Late Bhagabat Mahapatra appeared in the case. He admitted unauthorised occupation and prayed for lease of the enclosed area. The Tahasildar enquired into the matter and recommended to lease out the suit land to Bhagabat on condition that the latter would exchange an equal extent of land from his own land contiguous to the disputed plot. The villagers, however strongly protested against the proposed lease in favour of Bhagabat. The Collector made a local inquiry, and after being satisfied that the proposed lease would inconvenience the entire villagers, rejected the petition for lease and orders for eviction were duly passed. The Plaintiffs are mere trespassers.

3. Amongst other Issues, the following two Issues were framed:

Issue No. 2 Whether the suit property is Gochar or communal land, and whether the Plaintiffs can acquire any title or interest thereon by encroachment?

Issue No. 3 Whether the Plaintiffs have acquired occupancy rights over the suit land?

4. On 5-5-1962, opposite parties 7 and 8 filed an application under Order 1, Rule 10 CPC on behalf of the villagers of Gabadihi. In the application their assertions were that the disputed land was communal land of the villagers and that the villagers opposed the grant of the lease of the disputed land in favour of the Plaintiffs. On the objection of the villagers, the Collector rejected the Plaintiffs' prayer for grant of lease and the Collector's order was confirmed by the Revenue Divisional Commissioner. The Plaintiffs have filed the suit against Defendants 2 to 6 who are their brother and sisters without making the villagers parties. As the disputed land is communal land and is used for Gochar by the villagers, they are vitally interested in it and that they should be impleaded as parties to the suit. This application was opposed by the Plaintiffs. The learned Munsif, by his order dated 12-5-1962, allowed the application and directed that opposite parties 7 and 8 should be added as Defendants and the plaint should be amended accordingly. On the basis of his order, the plaint has been amended, and opposite parties 7 and 8 have been added as Defendants 7 and 8. Against the aforesaid order, the civil revision has been filed.

5. Mr. Mohanti advances the following contentions-(i) that the suit is not a civil suit ordinarily triable within the jurisdiction of the Civil Court u/s 9, Code of Civil Procedure, and that the right to institute the suit arises from the provisions of

Section 14 of the Act; and (ii) that opposite parties 7 and 8 and the villagers are not interested in the suit land and Order 1, Rule 10, CPC has no application to this case.

6. The first contention of Mr. Mohanti has no substance. It is necessary to give some idea of the scheme of the Act. Section 3 prescribes that any person, who shall unauthorisedly occupy any land which is the property of the Government, shall be liable to pay by way of assessment. u/s 4, the decision as to rate or amount of rent assessed payable u/s 3 shall be recorded in writing and shall not be called into question in any Civil Court. Section 6 prescribes summary eviction, forfeiture, fine and the mode of eviction. u/s 7 prior notice to person in unauthorized occupation is to be given Section 10 provides remedies by way of appeal and revision. Section 14 says that object to the provisions of Section 4 any person aggrieved by any proceedings under this Act may apply to the Civil Court for redress. u/s 9, Code of Civil Procedure, the Civil Court have jurisdiction to try suits of civil nature, excepting the suit of which their cognizance is either expressly or impliedly barred. A suit in which the right to property is contested is a suit of civil nature. Ordinarily therefore the present suit is triable by Civil Court. In AIR 1940 105 (Privy Council) which has been approved in *Magiti Sasamal Vs. Pandab Bissoi*, their Lordships observed that it was the settled law that the exclusion of the jurisdiction of the Civil Courts was not to be readily inferred, but that such exclusion must either be explicitly expressed or clearly implied. If Section 14 of the Act had not been enacted, a plausible argument could be advanced that on account of the revision for summary remedy for eviction, subject to the right of appeal or revision, the same argument could be negated by a contention that the provision in Section 4 ousting the jurisdiction of the Civil Court only with regard to rate or amount of rent assessed, would lead to the conclusion that the Civil Court's jurisdiction was not barred with regard to eviction. Section 14 clarified the position by enacting that the Civil Court's jurisdiction was not barred on the question of eviction. Section 14 therefore makes no special provision with regard to a particular class of suit. The statute made it clear that the order of eviction of the Revenue Courts is subject to a decision of the Civil Court. Civil Court's jurisdiction, which it otherwise had, was not taken away either expressly or impliedly. The substantive provision in Section 14 also leads to the same conclusion. It says that any person, aggrieved by the proceedings under this Act, may apply to the Civil Court for redress. When the aggrieved person files a suit in the Civil Court, he is bound to establish his substantive right and title in respect of the property. In this case the Plaintiffs contend that by reclamation and continuous possession for more than 30 years, they have acquired occupancy right and that the suit land is not communal or Gochar land. The onus is entirely on the Plaintiffs to establish these rights. Such a suit comes within the well known category of cases for declaration of title, confirmation of possession, or in the alternative, recovery of possession, as is usually filed in the Civil Court. Section 14 therefore does not create any new class of suit merely because the order of the Revenue Court

directing eviction is to be assailed. There is therefore no substance in the argument that in such a suit, persons who are directly interested in claiming that the suit land is communal and Gochar land, cannot be impleaded.

7. The second contention of Mr. Mohanti is based on the provisions of Order 1, Rule 10, Clause (2) Code of Civil Procedure. The relevant portion of it may be quoted. "Order 1, Rule 10(2)-The Court may at any stage of the proceedings, either upon the application of either parties, and on such terms, as may appear to the Court to be just, order...that the name of any person who ought to have, joined, whether as Plaintiff or Defendant, or whose presence before the Court may be necessary in order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the suit, be added" Mr. Mohanti stresses upon the position that the expression "all the questions involved in the suit" can only be questions as between the parties to the litigation. For this purpose he relies on *Official Receiver of South Kanara Vs. Bastiao Souza and Others*, which has been followed in AIR 1962. Pat. 3574 In the former case, Mr. Justice Srinivas Ayyangar observed:

Where a third person who applies to be added as a party is only a permissible party, then on principle, his addition as party cannot generally be ordered when it is opposed by the person to fight whom he is so brought on record. The very basic principle of judgments inter parties is that judgments are *Dot* judgments in rem but declaratory and operative only as between them. The Plaintiff being generally dominus was there is no principle of justice upon which he can be compelled to fight against some other litigant not of his own choice unless such a person is required by positive rule of law. Clause (2) of Rule 10 cannot be read as requiring that all persons who have or claim to have or are likely to have any sort of right" title or interest in respect of any portion of the subject-matter of the suit should all be made parties. The expression therefore all the questions involved in the suit can only be questions as between the parties to the litigation.

There are two currents of thought on this particular topic and the aforesaid case takes a narrow view of the powers conferred on the Court. Even in the Madras High Court the subsequent decisions did not subscribe to the aforesaid view. In *Secy. of State and Another Vs. M. Murugesu Mudaliar and Others*, his Lordships Mr. Justice Venkatasubba Rao accepted the dictum laid down in a Bench decision of that Court reported in ILR 5 Mad. 526, wherein their Lordships observed:

To accept the more restricted interpretation involves the addition of words which we do not find in the section (Rule), namely, "between the parties to the suit", and there can be few, if any, questions which cannot be determined between the parties to the suit one way or other, and of which the determination, if they be material, will, as between the parties to the suit, not be final. On the other hand, the interpretation warranted by the terms would enable the Court to avoid conflicting decisions on the same question which would work injustice to a party to the suit, and finally and effectually to put an end to the litigation respecting them.

His Lordship also referred to the dictum laid down by Sir Ashutosh Mukherji in 11 C.L.J. 4267, wherein it has been observed that the object of the Legislature is to avoid multiplicity of suits and to ensure that the dispute may be finally determined at the same time in presence of all the parties interested without the delay and expense of several actions on trials. In AIR 1936 Mad. 4498, a Bench of that Court of which Sir Varadachariar was a member, laid down that the rules relating to joinder of parties were based on principle of avoiding multiplicity of suits not merely as involving waste of time and money but also to avoid possible conflict of decisions. It is not necessary to justify the addition of a Defendant that he should be interested in all reliefs or questions arising between the Plaintiff and the other Defendants. These decisions have taken the wider view of the Rule, and this wider view has consistently been followed in Madras (See In Re: Bangaru Reddi, and A.I.R 1953 Mad. 618) 10 The Madras High Court itself has therefore not accepted the view in Official Receiver of South Kanara Vs. Bastiao Souza and Others, .

8. A person is a necessary party if in his absence no effective decree can be passed. He is a proper party if his presence is necessary for an effectual and complete adjudication. I am in favour of the wider view as enunciated in Secy. of State and Another Vs. M. Murugesu Mudaliar and Others, subsequently accepted by the Madras High Court. In this particular case, whether the narrower or wider view is taken, the villagers are proper parties and they are to be impleaded for an effectual and complete adjudication. The main issue between the Plaintiff and Defendant. 1 is whether the suit land is the land of the Plaintiffs with occupancy right or is a communal and Gochar land. Opposite parties 7 and 8, on behalf of the villagers, contend that it is communal and Gochar land. In such a case they have direct interest in the" subject-matter of the suit involved between the parties to the litigation itself. In Razia Begum Vs. Sahebzadi Anwar Begum and Others, their Lordships amongst others, laid down two important propositions of law. Those are (i) The question of addition of parties under Rule 10 of Order 1 of the Code Civil Procedure, is generally not one of initial jurisdiction of the Court but of a judicial discretion which is to be exercised in view of all the facts and circumstances of a particular case. But in some cases, it may raise controversy as to the power of the Court in contra-distinction to its inherent jurisdiction, or, in other words, of jurisdiction in the limited sense in which it is used in Section 115 of the Code; and (ii) That in a suit relating to property, in order that a person may be added as a party, he should have a direct interest as distinguished from a commercial interest in the subject-matter of the litigation. The second proposition is directly relevant to the aforesaid discussion. The suit relates to property rights. Plaintiffs claim occupancy right and Defendant-1 claims that it is communal and Gochar land of the villagers. Even on the very case of Defendant. 1, the villagers have a direct interest in the subject-matter of the litigation. On the basis of this decision, the villagers should be impleaded as parties. Even on the narrower construction, as enunciated in Official Receiver of South Kanara Vs. Bastiao Souza and Others, the question involved in the suit between the Plaintiffs

and Defendant-1 is the same as is set up by opposite parties 7 and 8. For effectual and complete adjudication of such a question, the presence of opposite parties 7 and 8 is necessary. The contention, advanced by Mr. Mohanti to the contrary, is not well founded and is concluded by the Supreme Court decision which also noticed the narrower and wider views.

9. On the first proposition enunciated in the Supreme Court decision, the question of addition of parties under Rule 10 of Order 1 is generally not one of initial jurisdiction of the Court but of a judicial discretion which has to be exercised in view of all the facts and circumstances of a particular case. On this test also the Civil revision is liable to be dismissed. The admitted position is that the villagers contested the grant of lease in favour of the Plaintiffs throughout before the revenue authorities. On their opposition Plaintiffs' prayer was not accepted. They are also vitally interested in the communal and Gochar land if it is so. If on such facts and circumstances the learned Munsif has exercised his judicial discretion in favour of adding them as parties, this Court would not interfere in revision. The matter does not involve the initial jurisdiction of the Court and that the learned Munsif has not exercised his jurisdiction either illegally or with material irregularity.

10. Mr. Mohanti contends that the public interest, if any, would be amply served by the appearance of Defendant. 1 represented by the Collector of Puri. Defendant-1 and the villagers have the identical case. Mr. Mohanti has failed to convince me as to what injury would be caused to the Plaintiffs if the villagers also are added as parties and contest the suit on the identical issue raised between the Plaintiffs and Defendant-1.

11. It is necessary to refer to one important matter which has not been followed by the learned trial Court opposite parties 7 and 8 have been added as Defendants 7 and 8 on behalf of the villagers. In such a case, the Court must follow the provisions in Order 1, Rule 8 Code of Civil Procedure. The Court shall give at Plaintiffs expense notice of institution of the suit to all such persons either by personal service, or, where the number of persons or for any other cause, such service is not reasonably practicable, by public advertisement, as the Court in this case may direct. The learned trial Court should follow this procedure.

12. The Civil Revision fails and is dismissed with costs. Hearing fee of Rs. 50/. (Rupees fifty).