

(1983) 02 OHC CK 0007

In the Orissa High Court

Case No : Second Appeal No. 77 of 1978

Dileswar Patel and Others

APPELLANT

Vs

Mst. Binodini Patel and Others

RESPONDENT

Date of Decision : 03-02-1983

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 9
Orissa Estates Abolition Act, 1951 — Section 39, 7, 8A

Citation : AIR 1983 Ori 185 : (1983) 55 CLT 282

Hon'ble Judges : P.K. Mohanti, J

Bench : Single Bench

Advocate : R.K. Mohapatra, for the Appellant; S.S. Basu, for the Respondent

Final Decision : Allowed

Judgement

P.K. Mohanti, J.—The Second Appeal is by defendants 1 to 4 against a decree of reversal.

2. The suit was for a declaration of the plaintiff's title to and recovery of possession of the lands described in Schedule "B" of the plaint and for recovery of mesne profits " Rs. 800/-per annum from the date of her dispossession. The suit lands are bhogra lands. The plaintiff's case was that her father late Basudev gifted away the same in her favour by a registered deed of gift dated 8-10-1955 and she remained in possession from the date of gift. The gift was duly accepted by her and her name was recorded in respect of the suit lands in the current major settlement. Basudev died on 25-10-1956. All the bhogra lands of the family including the suit lands vested in the State of Orissa on 1-4-1960 under the provisions of the Orissa Estates Abolition Act. Defendant No. 10 Dhaneswar alone filed a claim u/s 8-A of the Act in respect of all the bhogra lands of the family. The Estate Abolition Collector settled the suit lands with the plaintiff and the other lands in favour of the sons and daughters of Basudev. The plaintiff claimed exclusive title on the basis of the aforesaid settlement in her favour.

3. The defendants denied due execution of the gift by Basudev and contended that it was obtained from him under undue influence and was never acted upon. They also contended that the Estate Abolition Collector had no jurisdiction to settle the suit lands exclusively with the plaintiff.

4. The trial court, on a consideration of the evidence led by the parties, held that the deed of gift was duly executed and acted upon and that the plaintiff was in possession of the suit lands from the date of gift till she was dispossessed in pursuance of an order dated 12-8-1972 made u/s 145, Cr. P.C. It held that whatever title had been acquired by the plaintiff under the gift was lost after vesting of the suit lands in the State Government under the O. E. A. Act. It also held that the plaintiff and the defendants being co-sharers, the settlement made in favour of the plaintiff would ensure to the benefit of the other co-sharers and the plaintiff cannot claim exclusive title and possession by virtue of the settlement. Upon such findings; the trial court decreed the plaintiffs suit declaring joint title of the plaintiff and defendants over the suit lands; but disallowed the prayer for recovery of mesne profits.

On appeal, the appellate court agreed with the findings of the trial court that the deed of gift was genuine and was duly acted upon; but it came to hold that the plaintiff had exclusive title and possession over the suit lands by virtue of the settlement and that the order of settlement was not open to challenge in view of the bar u/s 39 of the O. E. A. Act. Accordingly, it declared the plaintiff's exclusive title to the suit lands and directed delivery of possession in her favour. It also decreed the claim of mesne profits of the rate of Rs. 800/- per annum against defendants 1 and 2 for the year 1971 and onwards. Aggrieved by this decision, the defendants have come up in second appeal.

5. The original plaintiff Saraswati having died during the pendency of the suit her daughter Binodini Patel was substituted in her place.

6. It is urged in this appeal that, in view of the provision of Section 7 (1) of the Act the settlement made in favour of the plaintiff will ensure to the benefit of all the co-sharers.

7. Admittedly the suit lands are bhogra lands standing in the name of late Basudev Patel and all the bhogra lands of the family including the suit lands vested in the State Government free from all encumbrances in pursuance of the provisions of the Orissa Estates Abolition Act. After vesting, the plaintiff lost the title which she had acquired under the deed of gift. Basudev Patel had died on 25-10-1956 and on the date of vesting all his heirs were the intermediaries. Defendant No. 10 Dhaneswar alone filed an application u/s 8-A of the Estates Abolition Act for settlement of 76 acres of land including the suit lands. Saraswati, the original plaintiff did not prefer any claim u/s 8-A of the Act. The application filed by defendant No. 10 was registered as Estate Abolition Case No. 207 of 1962-63. The Estate Abolition Collector settled the suit lands with the plaintiff and the rest of the lands with the other co-sharers.

8. It would be appropriate to extract the relevant provisions of Section 7 of the Act;--

"7 (i) On and from the date of vesting:--

(a) All lands used for agricultural or horticultural purposes which were in Khas possession of an Intermediary on the date of such vesting.

(b) and (c) x x x x

shall, notwithstanding anything contained in this Act, be deemed to be settled by the State Government with such Intermediary and with all the shareholders owning the estate and such Intermediary with all the shareholders shall be entitled to retain possession thereof and hold them as raiyats under the State Government having occupancy rights in respect of such lands subject to the payment of such fair and equitable rent as may be determined by the Collector in the prescribed manner:

Provided that where the Intermediaries have come to any settlement among themselves regarding occupation of lands and file a statement to that effect before the Collector the lands shall be deemed to have been settled with the Intermediaries according to that settlement.

XX XX XX XX".

The appellate court found that the Intermediaries had not filed any statement before the Collector to show that they had come to any settlement amount themselves regarding occupation of the lands.

9. The legal position is well settled that if settlement is made on the application u/s 8-A of the Act filed by one of the Intermediaries, benefit thereof would accrue to the co-sharers even though they have not joined in the application. In the case of Hemchandra Dansane v. Dolamani Dansana, AIR 1965 Orissa 188, a Division Bench of this Court held that even though one of the co-sharers is found to be in khas possession of the agricultural land on the date of vesting, such possession shall be deemed to be the possession of the entire body of co-sharers and the land in possession of one of the co-sharers shall be deemed to be settled not only with him, but with all the shareholders owning the estate. This decision was followed in the cases of Pranakrushna Pradhan and Another Vs. Harekrishna Pradhan and Others, and Banchanidhi panda v. Nini Dibya (1974) 40 CLT 564. In view of this legal position the settlement made by the Estate Abolition Collector on the application of defendant No. 10 Dhaneswar must ensure to the benefit of all the heirs of late Basudev. The plaintiff cannot, therefore, claim exclusive title and possession over the suit lands.

10. No doubt, u/s 39 of the Orissa Estates Abolition Act, the jurisdiction of the civil court to entertain a suit in respect of any order passed under Chapters II to VI is excluded. But the exclusion of jurisdiction of the civil court is subject to certain limitations. Even if the jurisdiction is excluded the civil court has

jurisdiction to examine into cases where the provisions of the Act have not been complied with or the statutory tribunal has not acted in conformity with the fundamental principles of judicial procedure. In the present case the suit lands were settled exclusively with the plaintiff although Section 7 (1) of the Act enjoins that the settlement shall be deemed to have been made with all the co-sharers owning the estate, Section 39 of the Act is, therefore, not a bar for declaration that the settlement made on the application of defendant No. 10 Dhaneswar will ensure to the benefit of the entire body of co-sharer-intermediaries.

11. In the result, I allow the appeal, set aside the decree of the appellate court and restore that of the trial court. Parties to bear their own costs throughout.