

(2007) 02 OHC CK 0013

In the Orissa High Court

Case No : Second Appeal No. 114 of 1993

District Collector representing State of Orissa and also in his capacity as Collector and Others

APPELLANT

Vs

Nirupama Behera and Others

RESPONDENT

Date of Decision : 14-02-2007

Acts Referred:

Orissa Prevention of Land Encroachment Act, 1972 — Section 16

Citation : (2007) CLT 690 Supp : (2007) 1 OLR 550

Hon'ble Judges : A.K. Parichha, J

Bench : Single Bench

Advocate : Sangram Kumar Das, Addl. Standing, for the Appellant; M. Mishra and Associates, for the Respondent

Final Decision : Dismissed

Judgement

A.K. Parichha, J.—Late Banamali Behera, the predecessor of the present Respondent, as Plaintiff filed Title Suit No. 118 of 1984 in the Court of Munsif, Aska for declaration of his right, title over the suit land, confirmation of possession and also for declaring the order passed by Appellant No. 3-Tahasildar, Aska in E.C. No. 641 of 1978 as illegal and void. He also prayed to injunct the said Tahasildar from evicting him from the suit land. The case of the Plaintiff in brief was that the suit land is his family rayati land over which he and his family members are in possession for more than 35 years, but under wrong notion, the Tahasildar, Aska initiated encroachment case bearing E.C. No. 641 of 1978 and passed order of eviction vide order dated 11.1.1983. It was also pleaded that a portion of the suit plot sold to one Krushna Chandra Tripathy, was declared as rayati land by the Munsif, Aska in T.S. No. 56 of 1982 and since that order has attained finality not having been challenged in any higher forum, the same is applicable to the suit property also and as such the initiation of the encroachment proceeding with respect to the suit land was illegal.

2. Defendants-Appellants in the written statement claimed that the suit land is a

Government land and not the rayati land of the Plaintiff and the Plaintiff has never remained in possession of the suit land for more than 30 years and hence the eviction order in the encroachment case is legally just and proper. It was also pleaded that the findings in T.S. No. 56 of 1982 of the Court of Munsif, Aska is not applicable to the sit land as the land and parties are different. It was further averred that suit is not maintainable in view of the bar provided u/s 16 of the Orissa Prevention of Land Encroachment Act, in short, "the Act".

3. Learned Munsif, Aska framed several issues, accepted evidence of the parties and on consideration of those evidence, came to hold that the suit land is not a Government land, but a rayati land. He accordingly, declared the right title of the present Respondents, who were substituted in place of the Plaintiff after his death and declared the order of eviction passed in the Encroachment Case No. 641 of 1978 as illegal and void. A decree of injunction was also granted against the Tahasildar, the present Appellant No. 3. Aggrieved by that judgment and decree, the present Appellants carried appeal before the learned Subordinate Judge, Aska in Title Appeal No. 15 of 1990. The said appeal having been dismissed, the present Second Appeal has been filed.

4. The following substantial question of law has been formulated for consideration in this appeal.

Whether the Courts below erred in holding that the suit land was a rayati land of the Plaintiff-Respondents merely because a portion of the land in the same survey number (not the suit land) was declared in the earlier suit to be the rayati land of another person and whether the Courts below erred in entertaining the suit notwithstanding the statutory bar u/s 16 of the Orissa Prevention of Land Encroachment Act.

5. Mr. Sangram Das, learned Addl. Standing Counsel appearing on behalf of the Appellants states that when the Respondents had challenged the order of the Tahasildar passed in the encroachment proceeding, Section 16 of the Act was a bar for entertainment of the suit. He also submits that the findings given in Title Suit No. 56 of 1982 relates to the land other than the suit land and also relates to the persons other than the present Respondents and therefore, the findings or ratio of that case will never form the basis of decreeing the suit of the Respondents.

6. Mr. P.K. Das, learned Counsel for the Respondents on the other hand argues that the Plaintiff had not only prayed to declare the order of Encroachment Case No. 641 of 1978 of the Court of Tahasildar, Aska as illegal and to injunct the Tahasildar, Aska in the matter of eviction, but had also prayed for declaration of his right, title, interest and confirmation of possession over the suit land; and because the OPLE Court is not competent to decide issues relating to right, title, injunction etc., Section 16 of the Act was not a bar and the Civil Court had jurisdiction to entertain the suit. He further argues that the lands involved in Title Suit No. 56 of 1982 of the Court of Munsif, Aska and the land involved in the

present case are the two parts of the same plot and therefore, the ruling about the class of land for one part would also be applicable to the other part of the plot.

7. In the case of AIR 1940 105 (Privy Council) , while considering the jurisdiction of the civil Court, the following observation was recorded by the Privy Council.

The exclusion of the jurisdiction of the Civil Court is not to be readily inferred but such exclusion must either be explicitly expressed or clearly implied. Even if jurisdiction is so excluded, the Civil Courts would have 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 procedures.

So the legal position is settled that even on the face of statutory bar in the special enactment and availability of Tribunal for adjudication of disputes relating to such special statutes, Civil Court would have jurisdiction where provisions of the Act have not been complied with or the statutory Tribunal has not acted in conformity with the fundamental principle of judicial procedure. The aforesaid principle was followed in several cases including a Full Bench decision of this Court in the case of Magulu Jal and Others Vs. Bhagaban Rai and Others, . Similarly in the case of State of Orissa Vs. Bhanu Mali (Dead) Nurpa Bewa and Others, , this Court observed that the question relating to title of either party can be decided only by the civil Court and not in a summary proceeding under the Act and accordingly, the suit for declaration of title, confirmation of possession or in the alternative recovery of possession along with the matter of eviction under the Act would be maintainable in the civil Court and Section 16 of the Act will not operate as a bar in such situation.

8. In the present case, the Plaintiff-Respondents had prayed for declaration of their right, title, confirmation of possession over the suit land and had also prayed for injunction to restrain the present Appellant No. 3 from evicting them from the suit land. Along with these prayers, no doubt prayer had been made to declare the order of Tahasildar, Aska in the encroachment case as illegal and void, but that prayer being an annexe to the main issue of title and possession, Section 16 of the Act was not a bar and the civil Court had the jurisdiction to entertain the suit.

9. The claim of the Plaintiff-Respondents is that the suit plot is a rayati land of their family, which they were using as thrashing floor, but subsequently, they sold a part of it to one Krushna Chandra Tripathy, who continued to possess the same and when the Tahasildar started encroachment case and passed order of eviction of Krushna Chandra Tripathy, the said person filed T.S. No. 56 of 1982 arraying the present Appellants as Defendants. That suit was decreed on contest and the land involved was declared as rayati land of Krushna Chandra Tripathy. That order was not challenged in any appeal and has assumed finality. Since the land of Krushna Chandra Tripathy once formed part of the suit plot bearing

Survey No. 211, the findings of the civil Court in T.S. No. 56 of 1982 about the status of the land can be applied to the other part of the plot also. In that view of the matter, the learned Courts below did not commit any legal error in accepting the finding of the civil Court in T.S. No. 56 of 1982 as a material piece of evidence and to record its finding that the suit land is also a rayati land. Once the land is found to be a rayati land and not a Government land, the provision of the Act will not apply and encroachment case under the Act against the occupier of that land is not maintainable. Even otherwise, law is settled that when there is bona fide dispute as to whether the land in question is a private land or Government land, the State cannot unilaterally assume that it is a Government land and start encroachment proceeding under the Act. This view finds support from the observation of the apex Court in the case of Government of Andhra Pradesh Vs. Thummala Krishna Rao and Another, and of this Court in the case of State of Orissa and Another Vs. Daitari Sahu and Others, .

10. For the above noted reasons, the substantial question of law in this appeal is answered against the Appellants. The appeal is thus found to be without any merit and is dismissed on contest. However, considering the fact and circumstances, the parties are directed to bear their own cost in this appeal.