
(1977) 09 OHC CK 0013
In the Orissa High Court
Case No : Second Appeal No. 131 of 1974

Fakir Senapati

APPELLANT

Vs

Tahsildar and Others

RESPONDENT

Date of Decision : 12-09-1977

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 100
Specific Relief Act, 1963 — Section 37
Transfer of Property Act, 1882 — Section 105

Citation : AIR 1978 Ori 123 : (1977) 44 CLT 583

Hon'ble Judges : R.N. Misra, J

Bench : Single Bench

Advocate : S.N. Sinha, for the Appellant; Govt. Advocate, for the Respondent

Final Decision : Dismissed

Judgement

R.N. Misra, J.—Plaintiff has carried this second appeal against the affirming judgment and decree of the learned Additional Subordinate Judge of Cuttack in a suit for permanent injunction against defendants 1 to 3 restraining them from evicting him from the disputed property and prohibiting defendants from recovering the final penalty assessed on him under the Orissa Prevention of Land Encroachment Act.

2. According to the plaintiff, he applied to the Tahsildar of Cuttack for obtaining lease of the three acres of land from out of plot no. 2210 under Anabadi Khata No. 408 in Tauzi No. 4943 and the lease was for agricultural purposes. Plaintiffs application was registered as lease case No. 328 of 1961-62 and on 20th of December, 1961, the Tahsildar directed, grant of lease in favour of the plaintiff on payment of Salami of Rs. 300/- and annual rent of Rs. 19.44. In January, 1962, the Naib Tahsildar issued appropriate rent receipts. The Tahsildar Amin demarcated the leasehold and put the plaintiff in possession. The succeeding Tahsildar was not prepared to accept the lease and issued a General Notice on 21-5-1963 to the effect that no land in the mauza in question had been leased

cut. The plaintiff thereupon appeared before him and claimed that he was lessee of the disputed property. Encroachment Case No. 14 of 1963 was initiated against the plaintiff on the footing that plaintiff was a trespasser and had no right to possess the land. Plaintiff applied for the certified copy of the order granting lease to him but the same was not issued. The Tahsildar passed an order of eviction of the plaintiff and assessed penalty as also rent. As plaintiff failed to obtain any relief in the appeal filed by him against the said order, he ultimately came with the present suit.

3. Defendants have taken the stand that no application had been made by the plaintiff for grant of a lease and the same had not been registered as Lease Case No. 328 of 1961-62 and no order granting lease had ever been passed by the Tahsildar. It is also maintained that no Salami had been accepted from the plaintiff and no Patta had been issued. It is denied that any Amin had been deputed under directions of the Tahsildar to demarcate the leasehold and deliver possession thereof to the plaintiff. Payment of rent by the plaintiff and issue of a receipt to him have also been denied. It has been alleged that the plaintiff in connivance with some of the assistants of the Tahsil Office has manipulated to obtain a rent receipt in a fraudulent manner. In the circumstances, the initiation of the proceeding for his eviction was justified and the several orders which are impugned are not open to attack.

4. Six witnesses were examined for the plaintiff and five for the defendants. Both sides produced several documents. The learned Munsif came to hold that plaintiff had not obtained the grant of a lease according to rules; fraud had been practised on the plaintiff by one K. C. Mohapatra, said to be the lease clerk in the Tahsil Office; plaintiff had never been, admitted into tenancy as he has failed to establish payment of Salami, as no Patta had been produced by the plaintiff, the trial court came to hold that plaintiff had no title to the alleged leasehold. The suit was, therefore, dismissed.

On appeal, the learned Additional Subordinate Judge, took the same view and upheld the decree dismissing plaintiff's suit.

5. Mr. Sinha appearing for the plaintiff-appellant contends that the scope of the suit had been wholly misconceived and on the basis of the rent receipt, the courts below should have come to hold that the plaintiff had been admitted into an agricultural tenancy and, therefore, no eviction proceeding lay against him as a tenant could not be a trespasser. It is further maintained that the courts below should have come to hold that there was actually a lease case bearing No. 328 of 1961-62 and as the same had not been produced though called for, adverse inference should have been drawn against the defendants.

6. In paras 1, 2 and 3 of the plaint, plaintiff asserted that he made an application for lease to the Tahsildar of Cuttack and the same came to be registered as lease case No. 328 of 1961-62 and an order for grant of raiyati lease was passed on 20-12-1961 on condition that Salami of Rs. 300/- has to be paid and annual rent

would be Rs. 19.44 paise. According to the plaintiff, the rent was paid on 17-1-1962. Ext. 4 is claimed to be that rent receipt. P.W. 5 claims that he was the Naib Tahsildar of the area till 1963 and he had issued Ext. 4. The witness has admitted in cross-examination that he never saw any lease Patta of the plaintiff nor has he seen the receipt in token of payment of Salami. According to the witness, a Parwana was given to him by one K. C. Mohapatra, the Lease Clerk, at Jagatput. The plaintiff came with the lease clerk to the Naib Tahsildar at the time of payment of the rent. It is the authority indicated in the Parwana which led to acceptance of rent by him. The courts below have come to hold in the absence of any record of the lease case, a copy of the order granting lease, the receipt showing payment of Salami and the like that there was actually no lease proceeding and there was no direction of the Tahsildar to lease out the disputed property in favour of the plaintiff. Some of the ministerial staff in the office of the Tahsildar carried on intrigues with a view to collecting money for their own purposes and the instant case appears to be one where the plaintiff had been cheated.

7. There is no clear material to support the plaintiff's stand that there was a grant of lease in his favour. The small links on which Mr. Sinha wanted to rely to build up the basis for the plaintiff's right, I do not think, can be relied upon for holding that the plaintiff had a grant of lease of the disputed property. At any rate, the evidence having not been accepted by the two courts below, in second appeal, I do not think, the facts call for interference.

8. According to the plaintiff, the grant was on the basis of Salami and rent. Admittedly Salami has not been paid. Even if it is said that rent had been accepted, tenancy would not indeed accrue as long as Salami has not been paid. It is, however, unnecessary to examine that aspect of the matter when in view of the clear findings, the courts below have come to the conclusion that plaintiff has failed to prove that he is lessee of the property. The plaintiff himself has admitted in cross-examination:

"I had not filed any application or had not deposited any Amin fee, but Krushna Mohapatra had done so."

It, is on the basis of this evidence that the trial court had come to hold that plaintiff had been duped by the said employee in the Tahsil Office.

9. Law is indeed settled that agricultural tenancy can be created by acceptance of rent. In the case of Basiruddin v. State of Orissa ILR (1961) Cut 595, a Bench of this Court has held that the State Government comes within the meaning of "landlord" under the Orissa Tenancy Act and, therefore, the State also can create agricultural leases by mere acceptance of rent. Here, however, the setting of events is somewhat different. Admittedly, tenancy was on terms of Salami and rent. There is also lot of doubt as to the genuineness of the rent receipt. It is not for me in second appeal to vacate the findings of the courts below reached on evidence.

10. I am, therefore, inclined to agree with the learned Appellate Judge in his conclusion that the plaintiff had failed to establish that he was a lessee of the property. Since the State is the true owner and relief of injunction against the true owner can be had on the basis of title, once plaintiff fails to establish title, he is not entitled to the relief for injunction. The suit was rightly dismissed and the second appeal must accordingly fail. The facts of the case, in my opinion, justify that plaintiff may not be saddled with costs of litigation since he himself has been duped.