
(1987) 07 OHC CK 0005
In the Orissa High Court
Case No : Second Appeal No. 203 of 1980

Golakh Maharana

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 23-07-1987

Acts Referred:

Citation : (1987) 64 CLT 592

Hon'ble Judges : G.B. Patnaik, J

Bench : Single Bench

Advocate : B. Pal, for the Appellant; B. Rath and Addl. Standing Counsel, for the Respondent

Final Decision : Allowed

Judgement

G.B. Patnaik, J.—Plaintiff is the Appellant against a confirming judgment in 8 suit for declaration of Plaintiff's right of tenancy and for such other ancillary relief to which the Plaintiff is entitled.

2. It is alleged in the plaint that Ac.1.360 decimals of land in Khata No. 745, plot No. 1395 in mauza-Chandaka was the subject-matter of a lease case bearing Lease Case No. 1040 of 1967-68 and in the said lease case after complying with all the formalities required under the rules, the appropriate authority directed settlement of the land in favour of the Plaintiff on condition that Plaintiff would pay Salami of Rs. 40.80 paise. On getting certain extension for deposit of said Salami amount, the Plaintiff in fact deposited the Salami and the competent authority on receipt of Salami directed the Amin to correct necessary records and thus the Plaintiff acquired a right of tenancy over the land in question. Thereafter, the Plaintiff has been approaching the revenue authority for grant of Patta and fixation of rent, but the revenue authorities on one plea or the other have not issued any Patta. Though the Plaintiff is still possessing the land and has raised the crop, yet since the Patta was not issued in his favour it was necessary to file the suit in question.

3. The contesting Defendant was Defendant No. 4 who has taken a plea that in a subsequent lease case, Lease Case No. 68 of 1971, the land has been settled in her favour and, therefore, Plaintiff has no right over the property in question.

4. On behalf of the revenue authorities, a written statement has been filed stating therein that though Plaintiff applied for lease and paid Salami of Rs. 40.80 paise, yet subsequently on the application of Sabitri Das (Defendant No. 4), the land was settled in favour of said Sabitri Das and Patta was issued in her favour in respect of Ac. 1.00 out of the said land and, therefore, no Patta was issued in favour of the Plaintiff. It was also contended that no tenancy right accrues in favour of the Plaintiff on account of non-grant of Patta in question.

5. Though written statements has been filed on behalf of all the Defendants, yet during the trial of the suit, the Defendants remained ex parte. Plaintiff gave the evidence of one witness and got exhibited two documents. The learned Subordinate Judge, however, on consideration of the ex parte evidence adduced on behalf of the Plaintiff dismissed the suit on a finding that the land in question had not been settled with the Plaintiff and he could not acquire any right merely because he had paid the Salami after application for settlement of land by him. This finding of the trial Court was also affirmed in appeal be the learned Additional District Judge .and hence the present second appeal.

6. Mr. Pal, the learned Counsel for the Appellant contends that grant of Patta is not necessarily a pre-condition for conferring tenancy right in the Plaintiff and in view of the order of the appropriate authority directing payment of Salami and Salami having been paid, it must be held that in law the Plaintiff acquires a title. He further contends that if Plaintiff acquires title as early as in the year 1971, the State Government had no further right to grant a Patta in favour of Defendant No. 4 subsequently in the year 1973 and consequently, the Courts below committed an error in dismissing the Plaintiff's suit, 7. Mr. Rath, the learned Counsel for Defendant-Respondent No. 4, on the other hand, contends that the suit in question is not maintainable in view of specific provisions contained in the Orissa Government Land Settlement Act and no right accrues in favour of the Plaintiff since Patta has not been granted in favour of the Plaintiff.

8. So far as the question of jurisdiction is concerned, I do not find any substance in the contention of the learned Counsel for the Respondents. It is too well-settled that unless jurisdiction is specifically excluded normally the Civil Court will have the jurisdiction conferred on it. A suit for declaration of right on the basis of an order of the competent authority under the Government Land Settlement Act followed by payment of Salami will not oust the jurisdiction of the Civil Court to decide the matter merely because for an aggrieved party there might be some remedy provided under the Government Land Settlement Act. Such a point also had not been I would have no hesitation to reject the said submission of the learned Counsel for the Respondents.

9. Coming to the merits of the case, I find sufficient force in the contention of Mr.

Pal, the learned Counsel appearing for the Appellant. In the of Gadam Narasamma Vs. Dandasi Naya and Others, , this Court quoted with approval a passage from the decision of the Madras High Court in the case of Thambi Sampathu Rao Nainar and Ors. v. Appaswamy Nainar and Ors. (1930) Mad. W.N. 385, and it would be profitable to extract the said passage here:

.... But as regards lands of which Government is the owner and which is at their absolute disposal, either because it is assessed waste land, an escheated land or land resumed property, it is open to the Government to make a grant of such land to any person it thinks fit. In such cases, the order granting such land to such person has the effect of conveying to such person the title to the land, subject to payment of revenue, etc. Issue of patta ordinarily accompanies, if not follows, such orders, but is not absolutely necessary to complete such person's title....

Even under the provisions of the Circular issued by the Government of the year 1961, prescribing procedure for settlement, I do not find any provision to come to the conclusion that it is only after grant of the Patta, title is conveyed in favour of the grantee in respect of the land in question. On the other hand, in accordance with the prescribed procedure, the competent authority makes due enquiry by issuing proclamation and inviting objections and thereafter passes an order directing the grantee to pay the Salami in question and the grant followed by acceptance of Salami would confer valid title on the grantee. In this view of the matter, the Courts below were in error in coming to the conclusion that no title passed in favour of the Plaintiff because of non-grant of Patta in question.

10. Mr. Rath, the learned Counsel for Defendant-Respondent No. 4, however, places reliance on two decisions of this Court reported in State of Orissa and Ors. v. Bhakta Charan Naik and Ors. ILR 1965 Cutt. 22 and Duryodhan Das v. The Collector of Dhenkanal and Ors. 1973 (2) C. W R. 987. In the first case, what was decided was that in a case of lease for agricultural purpose, it would be open to a landlord to create a tenancy by giving possession and accepting rent. There is no dispute with the aforesaid proposition but the said decision is of no application to the point in issue in the present case. In the second case, it was observed that once Patta was granted and rent was collected, tenancy right created in favour of the grantee could not be taken away by the Government in exercise of powers of a grant or to withdraw from the lease. There also it had not come up for decision before this Court as to whether a tenancy right could be created by virtue of an order of the competent authority on payment of Salami notwithstanding non-grant of Patta. I fail to understand how the aforesaid decision has any application to the present case. It had not been stated anywhere in the aforesaid case that until and unless a Patta is granted, no right of tenancy is created. In my view, both the aforesaid decisions will have no application to the present case.

11. Before parting with this case, it would be appropriate also to dispose of an application filed by Defendant No. 4 Respondent for taking as additional evidence

the Patta granted in her favour. At this belated stage, after the arguments were advanced and the case was got part-heard, I do not think it appropriate to entertain the application. That apart, as has been rightly pointed out Defendant No. 4 was ex parte and no evidence had been adduced by her during the trial and, therefore, the question of permitting her to adduce additional evidence does not arise. Then again even if that document is taken into consideration, it will have no consequence since in view of my conclusion earlier, title had passed to the Plaintiff earlier and, therefore, nothing remained with the Government to settle with Defendant No. 4, The application for additional evidence is accordingly rejected. The document sought to be adduced as additional evidence may be handed over to Mr. Rath, the learned Counsel for Defendant No. 4-Respondent, 12. In the net result, therefore, the judgment and decree passed by both the Courts below are set aside and Plaintiff's suit is decreed. The second appeal is allowed, but without any Order as to costs.