
(1955) 07 OHC CK 0008
In the Orissa High Court
Case No : S.A. No. 76 of 1953

Gunia Padhan and Others

APPELLANT

Vs

Narayan Dhal

RESPONDENT

Date of Decision : 29-07-1955

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 80

Citation : (1955) 21 CLT 437

Hon'ble Judges : Rao, J

Bench : Single Bench

Advocate : M.S. Rao, for the Appellant; G.K. Misra, for the Respondent

Final Decision : Dismissed

Judgement

Rao, J.—The Plaintiffs are the Appellants. They filed the suit for a declaration of their title to and for confirmation of their possession over 2/3rd share of land covered by Khata No. 281 in Mouza Kantio Putasahi. They also prayed for a declaration that the eviction proceedings as a result of which the lands covered by the disputed Khata have been settled with Defendant No. 1 be declared void and inoperative.

2. The suit was decreed by the trial court, but on appeal by the first Defendant the appellate court dismissed the suit.

3. The facts of the case are briefly as follows-

Kusai, Ainthu and Nidhia were three brothers Baidhar, Defendant No. 3 is the son of Kusai Gunia Plaintiff No. 1, Naud, Plaintiff No. 2 and Benudhar, Plaintiff No. 3 are sons of Ainthu. The Plaintiffs' case is that Nidhia had taken in adoption a son of Ainthu. Lands measuring about 15.38 acres and covered by the disputed Khata were the ancestral properties belonging to the Plaintiffs and Defendant No. 3 who represents the elder branch, in consequence of which the lands stood recorded in his name in the settlement papers. It is the case of the Plaintiff that nevertheless the Plaintiffs who represented the two other branches of the family

had 2/3rd shares therein and that the remaining 1/3rd share belonged to Defendant No. 3. Their case is that they were in peaceful possession of property till the year 1945 when for the first time Defendant No. 1 with the help of Defendant No. 2, the Sarbarakar of the disputed village cut and carried away paddy from a portion of the disputed lands and when questioned he stated that the lands were resettled with him (Defendant No. 1) after the former tenants had been ejected therefrom for non-payment of arrears of rent.

4. The contention of Defendant No. 1 was that Defendant No. 3 was the sole owner of the disputed holding and that for arrears of rent and cesses due from him which he did not pay in spite of several notices, he was evicted from the holding in the year 1932. The Plaintiffs and Defendant No. 3 were aware of these proceedings. The holding was resettled with Defendant No. 1 in 1934 on taking from him the arrears of rent and cesses due and since then the Defendant No. 1 was in possession of the entire holding.

5. After filing the suit, the Plaintiffs filed an amendment-application praying for addition of the State as a necessary party to the suit on the ground that in the suit they challenged the eviction proceedings as illegal.

6. The arrears due for which the eviction proceedings were launched were Rs. 58-9-10 out of which, Rs. 38-12-4 represented the actual arrear of rent, Rs. 3-0-4 Forest cess, Rs. 4-13-2. Education cess and Rs. 12-0-0 fine. The eviction proceedings were held by the State in accordance with the then prevailing State-Jaw and there was also in evidence that several applications by the Plaintiffs were made to the State that they would pay the arrears if time was granted to Defendant No. 3 and Plaintiff No. 2 also.

7. In this appeal, Mr. M.S. Rao, the learned Counsel for the Appellants contends that the eviction proceedings are illegal and void and consequently ought to be set aside as not binding upon the Plaintiffs. His contention is that the entire rent was an amount due to the Lakhrajdar and not the State. As far as the State is concerned, it is only the Forest cess and the Education cess that are due to it and if the State had taken these eviction proceedings for the arrears of Forest cess and Education cess, the Plaintiffs would have paid the amount. The Plaintiffs could not pay the amount as the eviction proceedings comprised rent also amounting to Rs. 38-12-4 and consequently the learned Counsel contends that the entire proceedings are on the account void as the State had no right to take the eviction proceedings for the amount of rent due to the Lakhrajdar.

8. A copy of the Final Report on the Settlement of the Dhekanal Feudatory State, Orissa, Volume I, in Chapter X at page 22-Rights and liabilities of Tenants-says

5. Ejectment-He is not liable to be ejected from his holding except by the order of the State authorities and only on the following grounds

(a) If he remains in arrears at the end of a year and does not pay up the arrears after service of notice on him with reference to his Sarbarakar's arrear list.

and then at page 24, it says as follows-

22. Rent Free Tenures-Brahmottar and other rent free and Tanki-Lakhraj tenures are now heritable but not saleable without the permission of the State. They are voidable at the option of the grantor and the tenures may be forfeited for improper alienation. Tanki rents can be enhanced at the option of the Chief. Lakhrajdars supply coolies at the Car Festival and other social and religious occasions by way of bethi and the Lakhrajdars' raiyats have the same rights and liabilities as the State raiyats.

9. Reading these two sections-Section 5 and Section 22-of Chapter X, I am of opinion that the lands of the Lakhrajdars' raiyats also are liable to the ejectment proceedings contemplated u/s 5, if a Sarbarakar shows that as an arrear in the list to be submitted by him to the State. I cannot accept the contention of the learned Counsel for the Appellants that these two sections do not apply to the case of a Lakhrajdar and also the contention that as far as the arrears of the Lakhrajdar are concerned, ejectment proceedings by the State cannot be taken.

10. Even on the assumption that the state cannot take ejectment proceedings for the arrears of rent due to the Lakhrajdar, yet there are arrears towards Forest cess and Education cess which are due to the state and the ejectment proceedings, according to the lower appellate Court, could be supported and held as valid, because the ejectment proceedings could be taken by the State for arrears due to it. Mr. M.S. Rao contends that the ejectment proceedings are illegal in as much as they are only for an amount of Rs. 7-13-6 which fact if really known to the Plaintiffs, they would have paid the amount. He also contends that the ejectment proceedings having been taken for an amount of 58-9-10 as due from the raiyats whereas in reality only an amount of Rs. 7.13 was due, the said proceedings for that reason are illegal and void.

In support of his contention, he relied upon various decisions in the cases of Balkrishna Das and Ors. v. Simpson, Janukdharilal v. Gossain Lal Bhaya Gaywal, Ganga Pershad Sahu and Anr. v. Irshad Ali Khan and Anr. and Kripa Sindhu Roy and Ors. v. Banchanidhi Mohanti and Ors. In my opinion, none of these decisions supports the contention of Mr. Rao. The decision of the Privy Council reported in Balkrishna Das and Ors. v. Simpson and the other decisions are clearly decisions where the sales for arrears of revenue were held to be without jurisdiction, because at the time when the sales took place the arrears for which the sales took place were totally non-existent in fact. In all these cases, the sales took place for arrears without there being in fact any arrear. For that reason, the Judicial Committee as well as the Calcutta High Court held that in such cases the sales were without jurisdiction and therefore were void. Mr. Rao could not place before me a decision that if the sale took place for a higher amount, then what the arrear was, in such a case the sale would be a nullity and I do not think that where the sale took place for a higher amount than the actual arrear, the sale would be a nullity. It may be an irregularity but it cannot be a void sale.

11. Consequently, I am of opinion that the eviction proceedings are legal and binding against the Plaintiffs and Defendant No. 3 and Defendant No. 1 being a person with whom the lands were settled by the State after the eviction proceedings, is entitled to remain in possession of the land.

12. Mr. G.K. Misra, the learned Counsel for the Respondent raised various objections to the Plaintiffs' suit and the maintainability of the second appeal. He contended that this appeal was not maintainable in as much as the State was not made a party to this appeal though it was a party in the lower appellate court and in the Trial Court. He also contended that the Defendants perfected their title by adverse possession of these lands and that the suit was bad for want of notice u/s 80 of the Code of Civil Procedure. In view of my decision on the point argued by the learned Counsel for the Appellants, I do not think necessary to consider these. The appeal, therefore, fails and is dismissed with costs.