

(1980) 02 OHC CK 0017
In the Orissa High Court
Case No : O.J.C. No. 148 of 1977

Indramani Jena and Others

APPELLANT

Vs

Dandasi Paik and Others

RESPONDENT

Date of Decision : 13-02-1980

Acts Referred:

Citation : (1980) 50 CLT 368

Hon'ble Judges : P.K. Mohanti, J;N.K. Das, J

Bench : Division Bench

Advocate : D.P. Sahoo, for the Appellant; Addl. Standing Counsel, for the Respondent

Final Decision : Allowed

Judgement

N.K. Das, J.—O.P. No. 1 filed a petition before the Special Officer, the Officer authorised under the Orissa Regulation 2 of 1956, complaining that his father executed a mortgage bond in respect of the disputed lands in favour of the present Petitioners in the year 1964 and the lands were given as security for adjustment out of the usufructs thereof and the present Petitioners were still in possession of those lands. It was contended that O.P. No. 1 and his father belonged to scheduled tribe and class and as such, occupation of the lands by the present Petitioners was contrary to the provisions of the Orissa Regulation 2 of 1956. O.P. No. 1 prayed for restoration of possession of the lands in question under the provisions of the aforesaid Regulation O.P. No. 2 is the brother of O.P. No. 1 who was arrayed as Respondent No. 3 in the case before the Special Officer.

No written statement was filed by the present Petitioners; but they contested the case and contended that they have reclaimed the lands and are in possession of the same and there was no such transfer, as alleged by the present O.Ps. The Special Officer discussed the evidence and relied on the testimony of one retired school teacher P.W. 3 and held that there was sale of the land to the present Petitioners. But he came to the following conclusion:

If it is assumed that the land was sold it must have been sold about the year 1956 xx xx and the Respondent has been in possession of the same since then. The Petitioner filed petition for restoration of the land on 3-12-1971. So by the time the Petitioner filed petition the Respondents had completed a possession of the land for about a period of 15 years by which they have perfected their right and title over the land by adverse possession.

With the aforesaid observation, the Special Officer rejected the claim of O.Ps. 1 and 2. In appeal, the Collector held that the Regulation has been amended meanwhile and the period of limitation has been increased to thirty years. He further held that as per the amended law, the sale is void and the Appellant is entitled to obtain possession. This order of the Collector is challenged by the Petitioners here.

2. Both the Special Officer and the Collector have held that the present Petitioners have been in possession of the land in question prior to 1956. The duration of the period as to adverse possession was changed from twelve years to thirty years by Regulation 1/1975 which came into effect from 12.12.1975. This was again amended by Regulation 1 of 1975 and it was held that the period of possession relating to adverse possession which was increased to thirty years should be deemed to be effective from 2nd October, 1973.

3. The finding of fact that the Petitioners have been in possession of the lands in question prior to 1956 stands unchallenged and can not be interfered with. The petition before the Special Officer was filed on 3-12-1971. So, the Petitioners had already completed possession of fifteen years by that time. In other words, the Petitioners have completed fifteen years" possession by the time the dispute arose. The-amended Regulations of 1975 and 1976 have no retrospective effect, inasmuch as the amendment came into force with effect from 2nd October, 1973. In other words, prior to 2nd October, 1973 the position of law was that title by adverse possession would be acquired on completion of possession for twelve years. In the instant case, no document is forthcoming. Only oral evidence was, adduced. The applicant has stated in his petition that the land in question was mortgaged, but while adducing evidence it was stated that the land was sold. There was no satisfactory evidence as to this alleged sale. Therefore, the Special Officer came to the conclusion that he was not definite about the sale of the land, but even if there was any sale, then the present Petitioners have perfected their title being in possession of the land in question for more than twelve years.

4. One examination of the materials available on record, it would appear that prevaricating statements have been made by different witnesses for the original applicant and the alleged mortgage or sale has not been proved. Simply relying on the testimony of P.W. 3, the Special Officer came to the conclusion that there might have been sale. On the other hand, from the prevaricating and inconsistent statements of the witnesses examined by the applicant, the fact of transfer has not been established. But the admitted fact is that the present Petitioners have been in possession for more than fifteen years by the time

dispute arose and as such, restoration of possession of the land in question cannot be allowed to O.Ps. 1 and 2. The appellate authority i.e. the Collector, was wrong in coming to the conclusion that as per amended provision, right by adverse possession would accrue being in possession for thirty years, in as much as it is not applicable to the present case, as discussed above.

5. In the result, the writ application is allowed. The order of the appellate authority i.e. Collector, Annexure-3 is quashed and the order of the Special Officer Annexure-2 is maintained.

There will be no order as to costs.

P.K. Mohanti, J.

6. I agree.