
(1954) 08 OHC CK 0006

In the Orissa High Court

Case No : Civil Revision No. 164 of 1953

Jagatguru Sankaracharya Bharati Tirtha Krishna Swamy

APPELLANT

Vs

Bhagabat Disoi

RESPONDENT

Date of Decision : 30-08-1954

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 9
Transfer of Property Act, 1882 — Section 105

Citation : AIR 1955 Ori 64 : (1955) 21 CLT 72

Hon'ble Judges : Panigrahi, C.J.; Rao, J

Bench : Division Bench

Advocate : P.C. Chatterji, for the Appellant;

Final Decision : Allowed

Judgement

Panigrahi, C.J.—The question raised in this revision is whether the Civil Court has jurisdiction to entertain the suit. The suit was one for

recovery of rent due from the defendant in respect of a piece of homestead land. The land was recorded in the name of the defendant, as Stithiban

in the Provincial Settlement of 1899 and the rent fixed was 160 Handis and Kudias per year, in lieu of cash rent, in the year 1933 the defendant

executed a registered Kabuliyat (Ext. 1) by which he agreed to deliver 350 Kudias and 350 Handis, with an approximate value of Rs. 5/-/- per

annum. A suit for arrears of rent was instituted in O. S. 289 of 1946 in the Court of the Munsif, Puri, but it was ultimately compromised in the year

1949 (Ext. 4). The present suit was raised for realization of rent for the years 1949 and 1950. The defendant contended that the Civil Court had

no jurisdiction to entertain the suit as it was one between a landlord and a tenant for recovery of rent. The Courts below have upheld this

contention and directed the return of the plaint for presentation to the proper Court.

2. it appears to me that both the plaintiff and the Courts below have misconceived the nature of the claim and the relationship of the parties. The plaintiff unnecessarily denied that the defendant had any right of occupancy. The Courts below have rightly held that, that plea is not maintainable in view of the Settlement entries. The kabullyat executed by the defendant in 1933, recites that on the date of the grant the land was lying fallow and that the defendant took it on lease for the express purpose of putting up a house with a stipulation that he would deliver a certain number of Handis and Kudias annually to the plaintiff. The document contains a further recital that the defendant was not liable to eviction though the plaintiff was given the liberty, in case of default in payment, to realise any arrears of rent through a suit. The document purports to confer a permanent right of occupancy upon the defendant, and it is futile to deny that such a right has been conferred.

3. The question for consideration, however, is whether the relations between the parties are to be governed by the terms of the contract entered into between the parties as per Ext. 1, or by the Tenancy law. The mere fact that the defendant is a permanent tenant does not automatically attract the provisions of the Orissa Tenancy Act. The defendant can by no means be described as a "raiyat" within the meaning of that Act. A raiyat is defined in the Act as "'a person who has acquired a right to hold land for the purpose of cultivating it.

4. in the present case, the grant was made not for the purpose of cultivation but for putting up a house. Undoubtedly the defendant has acquired a right of permanent occupancy and is not liable to eviction, but that right has been conferred not by the Statute but by the terms of the kabuliyat Ext.

1. Occupancy right can be acquired by grant or custom, or by statute or by other means. The present case is one where such permanency has been conferred by a grant. I would, therefore, hold that the relationship of the parties is governed not by the provisions of the Orissa Tenancy Act

but by those of T. P. Act. Consequently, a suit for recovery of rent would lie in the Civil Court. The order of the learned Munsif holding that he had

no jurisdiction to entertain the suit, and directing a return of the plaint, is set aside. He will now proceed to try the suit and dispose it of in

accordance with law.

5. The Civil Revision is allowed, but as there is no appearance for the opposite party there will be no order as to costs.

Rao, J.

6. I agree.