

(1971) 11 OHC CK 0010

In the Orissa High Court

Case No : Second Appeal No. 248 of 1968

Jogendranath Mohanty and Another

APPELLANT

Vs

Jagannath Mohanty and Others

RESPONDENT

Date of Decision : 30-11-1971

Acts Referred:

Orissa Estates Abolition Act, 1951 — Section 39, 5(80), 6, 7, 8

Citation : (1972) 38 CLT 225

Hon'ble Judges : A. Misra, J

Bench : Single Bench

Advocate : B.K. Pal, for the Appellant; K.M. Swain, for the Respondent

Judgement

A. Misra, J.—Plaintiffs are the Appellants against a reversing judgment.

2. They filed the suit for declaration of title to, confirmation of possession and a permanent injunction restraining the Defendants Nos. 1 and 2 from interfering with their possession of the disputed land described in the plaint-schedule. Their case, in brief, is that Defendant No. 7 was the owner of the kharida Jamabandi Madhaasat wadhikari interest in 1.28 acres of which the suit land measuring 0.28 acre forms a part. Defendant No. 2 borrowed Rs. 1, 000/- from Defendant No. 3 and executed a mortgage by conditional sale in his favour on 5-8-1949. He, however, continued in possession of the property. As Defendant No. 3 pressed for re-payment of his dues, Defendant No. 2 sold the 28 decimals in dispute to the Plaintiffs under a registered sale deed dated 5-3-1954 for a consideration of Rs. 300/-, the mortgagee having agreed to receive part payment and release the said portion from the mortgage security. Thus, the Plaintiffs claim to have acquired title to and possession of the suit land. Defendant No. 2, however, paid only Rs. 250/- out of the consideration to Defendant No. 3. On 17-8-1960, Defendant No. 2 executed a nominal sale deed without consideration purporting to convey the entire property including the suit land in favour of his uncle (Defendant No. 1, Defendant No. 3 filed a suit to enforce his mortgage impleading the Plaintiffs as when as Defendant Nos. 1 and 2 wherein he

acknowledged receipt of Rs. 250/- out of the consideration paid by the Plaintiffs under his sale deed. A preliminary decree was passed in the mortgage suit. On 28-4-1963, the Madhyasat wadhikari interest was abolished under the provisions of the Orissa Estates Abolition Act and the land vested absolutely in the State Government. Thereupon, on application by the Plaintiffs u/s 8A of the Estates Abolition Act, fair and equitable rent was assessed and the suit 28 decimals of land settled on the Plaintiffs. As Defendant No. 1 threatened to interfere with their possession and got his name recorded in the settlement record, the present suit was instituted.

3. The suit proceeded ex parte against Defendant Nos. 2 and 3. Defendant No. 1 resisted the suit alleging that the sale deed executed by Defendant No. 2 in favour of the Plaintiffs was a collusive one without any consideration and the same was never acted upon. Therefore, the Plaintiffs cannot claim to have acquired any title to the suit land. According to him, if any fair and equitable rent has been assessed and the suit land settled on the Plaintiffs under the provisions of the Orissa Estates Abolition Act, the same was obtained fraudulently and such a settlement is illegal and without jurisdiction.

4. The trial Court decreed the suit on the following findings : (1) The sale deed (Ex. 1) executed by Defendant No. 2 in favour of the Plaintiffs dated 5-3-1954 is valid, but consideration has not been paid thereunder; (2) though no consideration was paid, title to the suit land passed to the Plaintiffs under Ex. 1; (3) the Plaintiffs were in possession till 1960 and there, after dispossessed by Defendant No. 1 by force; (4) the suit is not barred by limitation and (5) the Plaintiffs having acquired a valid title are entitled to recover possession of the property. The lower Appellate Court reversed the judgment and decree of the trial Court and dismissed the Plaintiffs' suit on the following findings : (1) Consideration was not paid under the sale deed (Ex. 1); (2) as title was intended to pass on payment of consideration, Plaintiffs have not acquired any title to the suit land and (3) the Plaintiffs were not in possession of the suit land.

5. The main contention urged by learned Counsel for Appellants is that the Courts below have erred in confining their consideration to the question whether under Ex. 1 title passed to the Plaintiffs or it was intended that passing of title would be dependent on payment of consideration. According to him, the Plaintiffs claim title to the suit land not, only on the basis of their purchase under Ex. 1, but also on the basis of the right acquired by them under the settlement from the State Government u/s 8A of the Orissa Estates Abolition Act (hereinafter to be referred to as the Act) after abolition of the intermediary interest. This contention requires careful examination.

6. There is no dispute that the suit land measuring 28 decimals formed part of the 1.25 acres kharida Jamabandi Madhyasat wadhikari interest of Defendant No. 2. It is also not disputed that this intermediary interest was abolished on 28-4-1963 under the provisions of the Act. The transfers of a portion in favour of the Plaintiffs under Ex. 1 and the entire property subsequently in favour of

Defendant No. 3 on 17-8-1960 were prior to the abolition of the intermediary interest. The consequence of abolition is provided in Section 5(80) of the Act. Under this provision, on abolition, the entire Intermediary interest free from all encumbrances vested absolutely in the State Government other than the interest expressly saved by or under the provisions of the Act. Therefore, the question whether title had passed to the Plaintiffs under Ex. 1 or the passing of title was dependent on payment of consideration is immaterial for deciding whether the Plaintiffs have acquired title to the suit land. Even if under Ex. 1 title had passed to the Plaintiffs, the same came to an end on abolition of the intermediary interest. If passing of title under Ex. 1 was dependent on payment of consideration and the same had not passed to the Plaintiffs, it remained with Defendant No. 2 or passed to Defendant No. 3 under his sale deed of the year 1960. Even in such a contingency their respective rights in the suit land must be deemed to have come to an end on abolition of the intermediary interest. Therefore, as has been rightly contended by learned Counsel for Appellants, for a decision in this suit the question with whom title rested prior to the date of abolition is not very material.

7. The question necessarily arises whether after vesting of the suit land in the State Government as a consequence of abolition on 28-4-1963, the Plaintiffs have acquired any title to the suit 28 decimals. In paragraph 5 of the plaint, it has been specifically averred that while the Plaintiffs were in possession of the Madhyasat wadhikari interest in the disputed land, the intermediary interest was abolished and their rights came to an end. Thereafter they applied under the provisions of the Act and settlement on fair and equitable rent was granted in their favour in respect of the disputed land by the State Government and they have been in possession and enjoyment of the suit land. Thus the Plaintiffs have clearly alleged a case of acquisition of title after abolition of the intermediary interest by settlement from the State Government independent of the title which they claim to have got under Ex. 1 and lost as a consequence of abolition. Defendant No. 1 in paragraph 7 of his written statement has purported to controvert the above averment of the Plaintiffs by alleging that they were not entitled to get settlement under the Act, and if any such settlement has been obtained, the same was fraudulent, illegal and without jurisdiction on the ground that they were not in possession of the suit land at the time of vesting. Ex. 3 is the rent schedule evidencing settlement of the suit land in favour of the Plaintiffs under Sections 6, 7 and 8 of the Act. Section 7 provides for settlement of agricultural lands in khas possession of an intermediary on the date of vesting subject to determination of fair and equitable rent on a claim filed in accordance with Section 8A within the prescribed period. On such settlement, the intermediary is entitled to hold the land as a raiyat with occupancy, right under the State Government. In this case, Ex. 3 proves that the suit land was settled with the Plaintiffs under Sections 6, 7 and 8 on determination of fair and equitable rent. The legal position relating to the effect of abolition and the subsequent settlement under the relevant provisions of the Act has been

explained by the Supreme Court in the decision reported in *Shivashankar v. Baikuntha* 1969 S.C.D. 982, while dealing with the corresponding provisions of the Bihar Land Reforms Act as follows:

The quondam proprietors and tenure holders of those estates lose all interest in those estates. As proprietors they retain no interest in respect of them whatsoever. But in respect of the lands enumerated in Section 6 the State settled on them the rights of raiyats. Though in fact the vesting of the estates and the deemed settlement of raiyat's rights in respect of certain classes of lands included in the estates took place simultaneously, in law the two must be treated as different transactions; first there was a vesting of the estates in the State absolutely and free of all encumbrances. Then followed the deemed settlement by the State of raiyat's right on the quondam proprietors.

This being the legal position, when the intermediary interest in the present case was abolished, the previously existing rights of the intermediaries with whomsoever it rested came to an end, by the settlement under Ex. 3, the Plaintiffs must be deemed to have acquired a new and independent title which is not in any manner connected with or dependent on passing of title or otherwise that might have occurred under Ex. 1.

8. Mr. Swain, learned Counsel appearing for Respondent No. 1, however, contends that in the Courts below no issue was framed as to the title of the Plaintiffs on the basis of settlement obtained from Government after abolition, and as such, they have not decided the legality of such settlement. In these circumstances, he urges that the matter is to be remanded to the trial Court for determination as to whether the State Government had jurisdiction to pass orders settling the land in favour of the Plaintiffs. Though Section 39 of the Act bars the jurisdiction of the Civil Court in respect of any order passed under Chapter II of the Act, it is contended that it is open to the civil Court to question the jurisdiction of the Collector in passing an order without adopting the proper procedure. In support of this contention, he has placed reliance on the decision reported in *Baikuntha Das v. Sabitri Devi* 1971 (2) C.W.R. 326. The facts of that case, however, are distinguishable. There, the jurisdiction of the Collector to pass the order was assailed on the ground that the procedure as provided in the proviso to Sub-section (2) of Section 8A had not been followed in disposing of the claim. In those circumstances, it was held that the provision regulating the procedure being or mandatory, non-fulfilment of its requirements affected the jurisdiction of the Collector to pass the order. In the present case, as already stated, in paragraph 7 of the written statement the validity of the order and the jurisdiction of the Collector have been challenged only on the ground that the Plaintiffs were not in possession of the suit land at the time of vesting. In a decision of this Court reported in *Krushna Chandra v. Hemamani* it was held that the question whether an intermediary was in possession on the relevant date is not a jurisdictional fact and the matter falls exclusively within the jurisdiction of the Estates Abolition Collector. Similarly, in another decision of this Court

reported in *Ramkrushna Paramaguru v. Mrutyunjaya Das* it was held that any defect in Plaintiff's title prior to settlement is not open to enquiry by the civil Court, because the decision of the Collector under the Act is not open to question u/s 39 of the Estates Abolition Act. When the Defendant No. 1 in the present case, has not challenged the validity of the order or the jurisdiction of the Collector to pass the same on the ground that in enquiring into the claim of passing the order the mandatory provisions of the procedure have not been complied with, in my opinion, Section 39 of the Act is a bar to questioning the validity of the order settling the land on the Plaintiffs by determining the fair and equitable rent u/s 8A. In view of the pleadings, I do not consider that there is any necessity or justification for remanding the matter for enquiring into or deciding the validity or legality of the order passed by the Collector when the same has not been challenged in the written statement on the ground of non-fulfilment of any mandatory procedural requirement. Thus, in my opinion, irrespective of the defects that might have existed in the Plaintiffs' title to the suit land prior to the date of abolition, they have acquired a valid title by virtue of the settlement obtained from the State Government under ex. 3 and are entitled to the reliefs prayed for.

9. In the result, the appeal is allowed, the judgment and decree of the lower Appellate Court are set aside and the suit is decreed as prayed for with costs throughout.