

(1968) 05 OHC CK 0003
In the Orissa High Court
Case No : A.H.O. No's. 1 and 2 of 1963

Jogi Behera and Others

APPELLANT

Vs

Girija Sankar Roy and Others and Nilamani Behera and
Others and Smt. Durgamani Debi and Another and Nilamani
Behera and Others

RESPONDENT

Date of Decision : 01-05-1968

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 32 Rule 10
Orissa Estates Abolition Act, 1951 — Section 3(1), 3A, 4, 5

Citation : (1968) 34 CLT 729

Hon'ble Judges : Patra, J;G.K. Misra, J

Bench : Division Bench

Advocate : Ranjit Mohanty and R.K. Kar, for the Appellant; A.G. and Salil Kr.
Dey, for the Respondent

Final Decision : Dismissed

Judgement

G.K. Misra, J.—O.S. No. 156 of 1952 was filed by Girija sankar Roy and Binoysankar Roy. O.S. No. 158 of 1950 (formerly M.S. No. 385 of 1952) was filed by Smt. Durgamani Debi Defendant in both the suits are same. Both the suits were analogously tried as ,he cases of the Plaintiffs and the Defendants in both of them are almost identical. The disputed properties constitute a part of the river bed of Mahanadi. They were recorded as Anahadi and Nijchas in touzi Nos. 1962 to 1965 of the Cuttack Collectorate. The original touzis were partitioned. Plaintiffs in T.S. 156/52 and the Plaintiff in T.S. 158/56 respectively got four annas and twelve annas interests in touzis 1964 and 1965. In touzi 1962 Ganesh Prasad Bhagat and his co-sharers had sixteen annas interest and in touzi 1963 the Raja of Kanika had the entire interest.

The case of the Plaintiffs in both the suits is that though the Defendants catching fish in the disputed fisheries long since, they were merely lessees from year to year. Registered notices were served on the Defendants for determination of the

leases and to give up possession with effect from the last day of, Jeystha 1359. As the Defendants did not give up possession, the suits were filed for eviction, damages and for permanent injunction.

Defendants contested the suits claiming permanent tenancy and, in the alternative, acquisition of title by adverse possession. The two suits were filed on 10-10-1952 and 27-10-1952 respectively.

During the pendency of the suits, the estate vested in the State of Orissa on 14-9-1953 under the Orissa states Abolition Act, 1951 (Orissa Act No. 1 of 1952), hereinafter referred to as the Act. The State of Orissa filed applications under Order 32, Rule 10, Code of Civil Procedure, for being impleaded as a Plaintiff in both the suits. The applications were allowed on 17-8-1954 and the cases proceeded with the State 813 a co-Plaintiff in both the suits. The original Plaintiffs did not contest the litigations thereafter.

2. The trial Court decreed both the suits but reduced the claim for damages to Rs. 50/- in each of the suits. The lower appellate Court dismissed the entire claim for damages, but otherwise dismissed the appeals. Both the second appeals were dismissed. Against the orders dismissing the second appeals, these appeals have been filed.

3. Mr. Mohanty abandoned the contention that the State of Orissa could not continue the suits as Plaintiff. This question need not therefore be examined.

4. He, however, urged that the Defendants acquired permanent tenancy in the fishery and alternatively acquired title by adverse possession. The learned Advocate-General advanced a contention which had not been taken up in any of the Courts below that on vesting all rights in the fishery absolutely vested in the State Government free from all encumbrances and the Defendants had no interests therein so as to resist the claim for eviction.

5. The contention of the learned Advocate-General appears to be unassailable. Section 5 of the Act, so far as relevant, runs thus:

5. Notwithstanding anything contained in any other law for the time being in force or in any contract, on the publication of the notification in the Gazette under Sub-section (1) of Section 3, or Sub-section (1) of Section 3-A or from the date of the execution of the agreement u/s 4, as the case may be the following consequences shall ensue, namely:

(a) Subject to the subsequent provisions of this Chapter the entire estate including all communal lands and porambokes, other non-raiyati lands, waste lands, trees, orchards, pasture lands, forests, mines and minerals (whether discovered or undiscovered, or whether being worked or not., inclusive of rights in respect of any lease or mines and minerals) quarries, rivers and streams, tanks and other irrigation works, water channels, fisheries, ferries, hats and bazars, and buildings or structures together with the land on which they stand shall vest absolutely in the State Government free from all encumbrances and

such Intermediary shall cease to have any interest in such estate other than the interests expressly saved by or under the provisions of this Act;

Explanation-"Encumbrances" means a mortgage of or a charge on any estate or part thereof and includes any rights in land or other immoveable property comprised in an estate, but does not include an intermediary interest or the interest of a raiyat or an under-raiyat.

It would be clear from the aforesaid section that on vesting the entire estate including rights in respect of fisheries together with the land on which they stand absolutely vested in the State Government free from all encumbrances.

An encumbrance includes any right in the land or other immoveable property comprised in an estate.

There is no provision in Chapter II whereby the interests of the Defendants, even if any, would be protected or saved after vesting. That a right in fishery is a benefit arising out of the land and constitutes immoveable property is concluded by *Ananda Behera v. State of Orissa* 22 (1956) C.L.T. 101 (S.C.). That Defendants' permanent tenancy rights or title by adverse possession in fisheries, assuming they had any such, are not enforceable against the State is concluded by *State of Madhya Pradesh Vs. Yakinuddin*, .

6. Mr. Mohanty frankly conceded that it is difficult to withstand the aforesaid contention. In this view of the matter, it is unnecessary to examine whether the Defendants had permanent tenancy or acquired title by adverse possession.

7. In the result, the appeals fail and are dismissed, but, in the circumstances, parties to bear their own costs throughout.

Patra, J.

8. I agree.