
(2002) 01 OHC CK 0028
In the Orissa High Court
Case No : First Appeal No. 26 of 1980

Keshab Marai @ Dharua Marahi and Others	APPELLANT
Vs	
Kunja Behari Patel and Others	RESPONDENT

Date of Decision : 28-01-2002

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 96

Citation : AIR 2002 Ori 121 : (2002) 93 CLT 304 : (2002) OLR 238 Supp

Hon'ble Judges : P.K. Patra, J

Bench : Single Bench

Advocate : None, for the Appellant; Sangram Das, A.S.C. and S.K. Nanda, on behalf of N.C. Pati, for the Respondent

Final Decision : Allowed

Judgement

P.K. Patra, J.—Defendant No. 5 in Money Suit No. 110/22 of 1975/77 has challenged the judgment dated 22.9.1979 and decree dated 26.10.1979 passed by the Subordinate Judge, Patnagarh dismissing the suit on contest against defendant No. 1 (State of Orissa), ex parte against defendant Nos. 2 and 4 without cost and decreeing the suit ex parte against defendant Nos. 3 and 5 in part with proportionate cost directing them to jointly pay a sum of Rs. 1,500.00 as damages to the plaintiffs who had claimed damages to a turn of Rs. 10,000.00 against the defendants too the loss sustained by them due to failure of their crop by the acts of the defendants depriving them of their right to irrigate their lands.

2. The plaintiffs are residents of village Rugudimunda in the Subdivision of Patnagarh, district Bolangir. Their ancestors were the Thikadars" of the village. Plot No. 212 of their village is a water reservoir and is recorded as such in the R.O.R. of 1936 Settlement. The lands described in Schedules A/I and A/II of the plaint belonged to the plaintiffs, recorded as irrigable lands. They claimed that their ancestors had excavated the aforesaid reservoir for the purpose of irrigating their lands and for eighty years prior to institution of the suit they exercised their right of taking water of the reservoir for irrigating their lands. Late Chakradhar

Patel, father of plaintiff Nos. 1 and 2 instituted a civil suit bearing No. 3 of 1941 in the court of the Subordinate Judge, Bolangir against the State of Patna and villagers of Sunamundi for declaration that the villagers of Sunamundi had no right to take water from the said reservoir and that the plaintiffs had exclusive right, title and interest over the said reservoir. The suit was dismissed and Civil Appeal No. 39 of 1942 was preferred in the Patna State High Court. The appellate court held that the plaintiffs in the suit had better right to take water from the said reservoir to irrigate their lands than the residents of village Sunamundi and further observed that after satisfying the needs of the plaintiffs, water would be given to the residents of village Sunamundi. It was also held by the appellate court that the said reservoir (locally known as "KATA") was the property of the State and, therefore, State had every right of dispose of its water in any way it liked through Village Panchayat.

It is alleged that on 16.9.1974, defendant No. 4, the Revenue Inspector of Patnagarh opened an outlet (GHAi) in the reservoir to provide water to the lands described in Schedule A/III of the plaint belonging to defendant No. 5, a resident of village Sunamundi as per the order of defendant No. 3, the Additional Tahsildar, Patnagarh. It is further alleged that water was supplied to the lands of other tenants of village Sunamundi on 17.10.1974. Pursuant to the said order of defendant No. 3, after appointing a Panchayat consisting of eight members each from village Sunamundi and village Rugudimunda, on 20.10.1974 defendant No. 3 with the assistance of defendant No. 4 and police force went to the said reservoir stating that defendant No. 5 had obtained order from defendant No. 2, the then Collector of Bolangir, for supply of water to his lands out of the said reservoir by cutting the earthen embankment and in spite of protest by the plaintiffs, the embankment was cut by the field servants of defendant No. 5 and villagers of Sunamundi allowing water from the reservoir to the lands of defendant No. 5. Due to rush of water from the said reservoir through the lands of the plaintiffs, the standing crops of the plaintiff on Schedule A/II lands were damaged and ridges were also damaged, causing loss to the tune of Rs. 5,000.00. Since the water of the reservoir was drained out, the lands of the plaintiffs mentioned in Schedule A/I could not be irrigated and they had to sustain a loss of Rs. 12,500.00. As against a loss of Rs. 17,500.00 the plaintiffs claimed damage of Rs. 10,000.00 from the defendants.

3. Defendant No. 1 contested the suit by filing written statement disputing all the allegations of the plaintiffs. According to defendant No. 1, the suit reservoir belonged to it exclusively and the action taken by defendant Nos. 3 and 4 to provide water to the villagers of Sunamundi who had also right to irrigate their lands from the said reservoir was not illegal or unauthorised and, therefore, the plaintiffs were not entitled to any damage as claimed by them.

Defendant Nos. 3 and 4 filed a separate written statement adopting the written statement of defendant No. 1.

4. On the pleadings of the parties seven issues were settled for determination. In

support of their case, the plaintiffs examined eleven witnesses and filed a number of documents. In support of their case, the defendants examined seven witnesses and also filed a number of documents. After careful analysis of the evidence on record, the learned Subordinate Judge held that the lands described In Schedules A/I and A/II belonged to the plaintiffs and that the suit reservoir belonged to the State; that the plaintiffs had got preferential right to irrigate their lands out of the water of the said reservoir; that after satisfying the needs of the plaintiffs, the villagers of Rugudimunda had right to irrigate their lands by taking the surplus water; and that the plaintiffs suffered a loss to the tune of Rs. 1,500.00 due to the wrongful action of defendant Nos. 3 and 5, and accordingly decreed the suit in part against both of them.

5. Shri S. K. Nanda on behalf of Shri N. C. Pati, teamed counsel for respondent Nos. 1, 3, 4, 5 and 8 and Shri Sangram Das, Addl. Standing Counsel appearing for respondent No. 10, State of Orissa were heard at length. While Shri Nanda supported the impugned judgment, Shri Sangram Das strenuously urged for setting aside the same being erroneous and unsustainable in the eye of law due to improper appreciation of evidence on record.

6. As per the judgment of the Patna State High Court dated 1.12.1942 in Civil Appeal No. 39 of 1942 (Ext. 1), the suit water reservoir (KATA) is the property of the State and the State has every right to dispose of its water in any way it liked through village Panchayat and the plaintiffs had a better right to irrigate their lands from the water of the suit reservoir than the defendants, it has been further held that for the sake of equity and good conscience, the plaintiffs were entitled to satisfy their need first and that the defendants were also entitled to have their lands irrigated by taking water from the said reservoir after the need of the plaintiffs was satisfied. It may not be out of place to mention that the claim for damages by the plaintiffs in the previous suit had also been rejected by the Subordinate Judge and confirmed by the appellate court.

7. In the present case, as per the averments of the parties, defendant No. 3 had passed an order to open an outlet in the reservoir on the application of defendant No. 5 for irrigating his lands and, accordingly, the said order was complied with by defendant No. 4. Had the plaintiffs applied to defendant No. 3 for opening an outlet in the reservoir for irrigating their lands described in Schedules A/I and A/II and had defendant No. 3 rejected their prayer and allowed the prayer of defendant No. 5, oblique motive could have been imputed on him. Simply because he allowed the prayer of defendant No. 5 and ordered opening of an outlet for irrigating the lands of defendant No. 5 who had a right to irrigate his lands with the water of the said reservoir, no oblique motive or intention could be attributed to defendant No. 3 and for that matter to defendant No. 5 too.

8. That apart, as alleged by the plaintiffs, if the embankment of the reservoir was cut and there was heavy rush of water through their lands damaging their standing crops, the question of not allowing their lands to be irrigated did not arise. They could have well preserved water in their lands as described in

Schedules A/I and A/II and thereafter allowed the surplus water to the lands of defendant No. 5 which adjoin their lands. There is no evidence on record to show that defendant No. 3 connived with defendant No. 5 and directed defendant No. 4 to open the outlet in the suit reservoir for irrigating the lands of defendant No. 5 and that either defendant No. 3 or defendant No. 5 had any intention to cause damage to the standing paddy crops of the plaintiffs. Their whole intention was to safeguard the paddy crops of defendant No. 5 from being damaged due to want of water and defendant No. 5 also having right to irrigate his lands with the water of the suit reservoir, there is no illegality on the party of defendant No. 3 to pass an order to let out water to the lands of defendant No. 5.

9. Orders passed by Government officers and action taken by them in due discharge of their official duty in good faith and without any oblique motive, cannot be adversely viewed so as to saddle them with damages for any loss sustained by anybody due to such orders or actions. Learned subordinate Judge has failed to appreciate this aspect of the case, it cannot also be said that the damage sustained by the plaintiff was due to any tortious or negligent action of defendant Nos. 3 and 5 and accordingly the learned Subordinate Judge has clearly erred in holding that defendant Nos. 3 and 5 were liable for the loss sustained by the plaintiffs.

10. The learned Subordinate Judge has assessed the damage sustained by the plaintiffs due to failure of crops to the tune of Rs. 1,500.00. As stated earlier, his finding that the said damage was caused due to the illegal action of defendant Nos. 3 and 5 is completely misconceived and erroneous and is the outcome of his improper appreciation of evidence on record. Therefore, the impugned judgment holding defendant Nos. 3 and 5 liable for damages cannot be sustained and is liable to be set aside and consequently the suit is to be dismissed which appears to be the outcome of village rivalry.

11. In the result, the First Appeal Is allowed. The impugned judgment dated 22.9.1979 of the Subordinate Judge, Patnagarh in Money Suit No. 110/22 of 1975/77 is set aside and consequently the Money Suit is dismissed. In the facts and circumstances of the case, parties are directed to bear their own costs.