

(1984) 03 OHC CK 0028

In the Orissa High Court

Case No : Second Appeal No. 177 of 1978

Kulamoni Routray and Others

APPELLANT

Vs

State of Orissa and Another

RESPONDENT

Date of Decision : 26-03-1984

Acts Referred:

Orissa Consolidation of Holdings and Prevention of Fragmentation of Land Act, 1972 —
Section 3(1), 4(4), 51, 6(1)
Orissa Land Reforms Act, 1960 — Section 4

Citation : (1984) 57 CLT 572

Hon'ble Judges : P.C. Misra, J

Bench : Single Bench

Advocate : P.K. Misra, for the Appellant; R.K. Mohapatra, A.N. Misra, S.C. Basa and K.M Misra and Addl. Standing Counsel, for the Respondent

Judgement

P.C. Misra, J.—The unsuccessful Plaintiffs are the Appellants against the confirming judgment passed by the Additional District Judge, Puri in T.A. No. 54/30 of 1976-75.

2. The Appellants as Plaintiffs had filed O.S. No. 250 of 1972 for a declaration that they are the occupancy raiyats in respect of the suit properties appertaining to Plot No. 1110 measuring 1.17 acres in Khata No. 985 of mouza Sriramchandrapur in the district of Puri, The admitted facts are that the suit-lands appertained to an intermediary estate of Mahanta Bhagaban Das in the record-of-rights of the year 1927. One Loka Barik was recorded as Dhulibhag tenant under the intermediary in respect of the suit-lands. It is further admitted that the estate vested under the Orissa Estates Abolition Act in the year 1963 and after vesting one Adhikari Nityananda Das had preferred claim in Claim Case No. 3675 of 1963-64 for settlement of the land in his favour on the allegation that he was in khas possession of the suit-properties on the date of vesting.

3. The case of the Plaintiffs, in short is that said Loka Barik bad occupancy interest over the suit-lands of which he was continuing in possession till 1954 or

1955 when he died. After his death, his sons continued in possession of the suit-properties and transferred their interest therein on 10-10-1968 in favour of one Sricharan Routray under a registered deed of conveyance. The purchaser remained in possession till his death and thereafter the Plaintiffs have been continuing in possession of the suit-properties as the successors of the purchaser Sricharan Routray. Their further case is that at the time when Sricharan Routray purchased the disputed property the claim case started at the instance of Adhikari Nityananda Das was pending. Sricharan Routray filed objection alleging that, he has been in possession of the properties in the said claim case. According to the Plaintiffs Adhikari Nityananda Das set up the present Defendant No. 2 namely Dhuli Charan Parida to claim tenancy right over the suit-properties with the ill-motive to defeat the claim of Sricharan Routray. The claim case of Adhikari Nityananda Das was dismissed after hearing against which he preferred an appeal. Sricharan Routray appeared in the appeal and contested the same. He also filed an independent appeal (E.A. Appeal No. 4 of 1970) as his claim of occupancy right over the suit-lands was not accepted by the Revenue Officer in the Claim Case. The appeal preferred by Adhikari Nityananda Das was dismissed for non-prosecution and Sricharan Routray also withdrew his appeal. It is alleged by the Plaintiffs that the present Defendant No. 2 (Dhuli Charan Parida) obtained an order from the appellate authority that he was in possession of the disputed lands as a trespasser at the time of vesting and that there were no occupancy tenants in respect of the lands when it vested with the State Government. The said Defendant No. 2 had previously filed an application u/s 4(a) of the Orissa Land Reforms Act for conversion of kind rent to cash rent which was allowed and he had been paying cash rent by the time the appellate authority disposed of the aforesaid appeals. The Plaintiffs' case is that irrespective of what was held in the Claim Case and in the appeals preferred by Adhikari Nityananda Das and Sricharan Routray It is Sricharan Routray who was in possession of the properties at all relevant times and after him the Plaintiffs have been in possession thereof after the death of Sricharan Routray. This suit has been filed for a declaration that the Plaintiffs are occupancy tenants as they were threatened to be dispossessed by the Revenue authorities.

4. The Defendant No. 1 namely the State of Orissa in its written statement alleged that the intermediary was not in khas possession of the properties on the date of vesting. It was alleged that the present Defendant No. 2 was in unauthorised possession of the suit-properties at the time of vesting According to the State, the Plaintiffs had not acquired any occupancy right in respect of the suit-lands and their claim in the suit is not maintainable.

5. The Defendant No. 2 filed written statement alleging that Loka Barik was not the occupancy tenant in respect of the suit-properties and recording of his name in the record-of-rights of the year 1927 as Dhulibhag tenant was a mistake. When this mistake was detected, Loka Barik executed a registered deed of surrender on 14-12-1927 in favour of Mahanta Bhagaban Das admitting therein that he has no interest whatsoever in the suit-properties. It is alleged by

Defendant No. 2 that Mahant Bhagaban Das was continuing in khas possession of the properties but finding that it does not yield good income he inducted the present Defendant No. 2 as a tenant to cultivate the suit-lands. It is specifically averred in the said written statement that Sricharan Routray has not acquired any interest by virtue of his purchase from Loka Barik nor he was in possession thereof at any time either before or after vesting of the estate.

6. The trial court after contest held that the Plaintiffs have no right, title or interest in the suit-properties inasmuch as the deed of relinquishment executed by Loka Barik in favour of Mahanta Bhagaban Das is genuine and therefore, the said Loka Bank had no transferable interest to be conveyed in favour of Sricharan Routray. The suit was accordingly dismissed by the trial court.

7. The Plaintiffs filed T.A. No. 54/30 of 1976/75 which came to be heard by the Additional District Judge, Puri. The learned appellate Judge, after hearing the counsel for both parties held that the order of the Revenue Officer declaring the Defendant No. 2 as raiyat in respect of the suit-lands cannot be challenged in the Civil Court and therefore, the suit is liable to be dismissed. The lower appellate Court, however, did not go into the other points raised in the appeal as its conclusion was that the order of the Revenue Officer had become final which cannot be disturbed by the Civil Court.

8. In this appeal, the Appellants have challenged the findings of the learned courts below and contended that the Plaintiffs' suit should have been decreed. During the pendency of this appeal an affidavit has been filed on behalf of the Appellants stating that the suit-lands, have come under consolidation operation by a notification u/s 3(1) of the Orissa Consolidation of Holdings and Prevention of Fragmentation of Land Act, 1972 and there has also been subsequent notifications u/s 6(1) of the said Act. It is prayed by the Appellants that the suit as well as the appeal should abate u/s 4(4) of the Act. In reply to the said affidavit the brother of Respondent No. 2 who is said to have been authorised in that behalf has filed a counter affidavit alleging that the prayer made in the suit is not available to be granted by the consolidation authorities and, therefore, the suit would not abate u/s 4(4) of the Act. It may be noted the averments of the Plaintiffs-Appellants that the suit-lands brought under consolidation operation have not been disputed by the Respondents.

9. Section 51 of the Orissa Consolidation of Holdings and Prevention of Fragmentation of Land Act provides that all questions relating to right, title interest and liability in land lying in the consolidation area, except, those coming within the jurisdiction of Revenue Courts or authorities under any local law for the time in force, shall be decided under the provisions of the Consolidation Act and not by the Civil Court. The prayer for declaration that the Plaintiffs are occupancy tenants in respect of the suit-lands is a question relating to right, title and interest in the land and would therefore, be within the jurisdiction of the consolidation authorities to determine. Thus, the suit of the Plaintiffs is bound to abate u/s 4(4) of the Act. The learned Counsel appearing for the Respondent No.

2 has urged that occupancy right is a status which cannot be the subject-matter of decision by the consolidation authorities and in support of his contention he has referred to a decision reported in Puni Bewa and Another Vs. Ananta Sahoo and Others, and another decision reported in Pranabandhu alias Panu Ojha Vs. Bhikari Maharana alias Ojha, In Puni Bewa and Another Vs. Ananta Sahoo and Others, it was said that the consolidation authorities have not been vested with the power to give a declaration of status with reference to a question as to whether the Defendant No. 1 in the said litigation was the adopted son and whether the prayer for partition could be granted on the basis that he was not the adopted son of the Plaintiff's father. In Pranabandhu alias Panu Ojha Vs. Bhikari Maharana alias Ojha,) declaration of the Plaintiffs title and possession depended upon adjudication of the question as to whether the Defendant was adopted son of Hadi Ojha or not. The word "status" referred to in those decisions means the status of the person by virtue of which an interest in the land is created The occupancy right is a right in the land which is acquired either by a contract or by operation of law and it had nothing to do with the status of a person. The right, title and interest in a land includes various rights including the right of an occupancy tenant. Therefore, declaration of occupancy right would come squarely within the meaning of the clause occurring in Section 51 of the Act.

10. The learned Counsel for the Respondent No. 2 has further argued that the declaration as prayed for by the Plaintiffs would not be available to them unless the orders of the Additional Tahasildar and Additional District Magistrate are set aside and the consolidation authorities would have no jurisdiction to set aside the said orders I do not want to express any opinion on the subject but assuming that to be so, the Plaintiffs do not want to pursue the suit either because according to them the relief is available without such declaration or because they accept the decision of the lower appellate court that the Civil Court has no jurisdiction to examine the correctness of the order of the Revenue Courts. It may be noted that the Plaintiffs have not made any prayer in the suit to set aside any of the orders passed by the Revenue authorities referred to in the plaint, and they do not want the court to determine the said questions. The plaint as it stands makes a simple prayer for declaration that the Plaintiffs are the occupancy tenants in respect of the suit-lands which come squarely within the clause right, title and interest. In land occurring in Section 51 of the Act.

11. In the conclusion. I hold that the suit should abate u/s 4(4) at the Orissa Consolidation of Holding and Prevention of Fragmentation at Land Act, 1972 and also this appeal. The judgments passed by the learned courts below are therefore, set aside as a necessary consequence as it has been already held in a series of decisions of this Court that an abatement of suit u/s 4(4) at the Act would have the effect to destroy and take away the jurisdiction of the Civil Court before whom the suit is pending. The appeal is accordingly disposed of. There would be no order as to costs.