

(2000) 01 OHC CK 0039

In the Orissa High Court

Case No : Original Jurn. Case No. 2738 of 1991

Laxmidhar Mahalik and Others

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 21-01-2000

Acts Referred:

Orissa Land Reforms Act, 1960 — Section 22, 23

Citation : AIR 2000 Ori 79 : (2000) 89 CLT 316 : (2000) 1 OLR 226

Hon'ble Judges : P.K. Mohanty, J;P.C. Naik, J

Bench : Division Bench

Advocate : S.D. Das, A.K. Choudhury, B.N. Udgata and S.K. Samantaray, for the Appellant; Addl. Standing Counsel, S.K. Nayak, A.K. Baral, K. Roy and J.K. Khuntia, for the Respondent

Final Decision : Allowed

Judgement

P.C. Naik, J.—The challenging in this writ application is to the order dated 31-1-1991 passed by the Additional District Magistrate (LR), Balasore, in O.L.R. Appeal No. 13 of 1989 whereby the order dated 23-2-1988 passed by the Revenue Officer, Bhadrak, in O.L.R. Case No. 17 of 1988 u/s 23 of the Orissa Land Reforms Act, 1960 (in short, "the Act") declaring the sale deed dated 18-2-1969 void and inoperative, was set aside.

2. The ease of the petitioners, who are Harijans by eastern, is that they being in urgent need of money, wanted to sell separate portions of lands to persons belonging to non-scheduled caste category. Accordingly, two separate applications - one by petitioners 1 and 2 (O.L.R. Case No. 254 of 1968) and the other by petitioner No. 3 (O.L.R. Case No. 260 of 1968) for permission u/s 22 of the Act were filed. Permission sought for was, however, rejected. But, according to the petitioners, on a mis-representation being made that permission had in fact been granted, registered sale deed No. 1850 was executed in favour of the ancestors of opposite parties 4 to 12 on 18-2-1969. Subsequently, after long lapse of time, coming to know about the false representation made regarding

grant of permission, they moved the Revenue Officer u/s 23 of the Act for setting aside the sale and restoration of possession. This was registered as O.L.R. Case No. 17 of 1988 of which notice was issued to the present opposite parties 4 to 12 who were also the opposite parties in the O.L.R. case. Before the Revenue Officer, no oral evidence was adduced by either party. Accordingly, relying on the application and reply thereto and the documents filed, the Revenue Officer came to the following conclusions:

"The applicants (petitioners) were persons belonging to the scheduled caste category whereas the purchaser were not so.

The sale deed in question had been executed by the petitioners in favour of the purchaser without any permission as required u/s 23 of the Act as the applications for permission (O.L.R. Case Nos. 254 and 260 of 1968) were rejected by the D.O., Bhadrak."

Accordingly, the sale deed executed on 18-2-1969 was declared invalid and the Tahsildar was directed to restore the case lands to the petitioners after evicting the opposite parties 4 to 12.

3. In an appeal filed by opposite parties 4 to 12 before the Additional District Magistrate (LR), Balasore, the appellate forum held that prior to the execution of the sale deed, the appellants had entered into possession on 18-8-1964 by virtue of an unregistered document executed between the husband of appellant No. 1 therein and the respondents (the present petitioners) and since then they have been in possession of the land in question. Though the appellate forum also came to the conclusion that the required permission of the competent authority had not been obtained prior to execution of the sale deed in 1969, considering the fact, that the appellants had been in possession and that the lands had been mutated in their favour in Mutation Case No. 499 of 1982 and no objection was filed before the Tahsildar in those proceedings, came to the conclusion;

(a) that there was an agreement between the sellers and the husband of appellant No. 1 for sale/transfer of the land:

(b) that the purchaser has been in possession since the date of execution of the unregistered document in 1964;

(c) that the contention of the sellers that they had no knowledge regarding rejection of their case for permission was not correct;

(d) that in spite of knowledge that permission has not been granted, the sellers mentioned in the sale deed that the sale was with permission.

Accordingly, the appeal was allowed on a finding that since the appellants were in possession of the land since 1964, they acquired the right and title by way of Adverse possession and that not the provisions of Section 23 but the provisions contained in Section 23-A of the Act were applicable to the case. This has brought the petitioners before this Court for relief.

4. Before proceeding further, we may point out that though opposite parties 4 to 12 had entered appearance, neither a counter was filed on their behalf nor were they represented on the date of hearing of this writ application. The learned State counsel, though advanced arguments on behalf of opposite parties 1 to 3 has not filed any counter. The lower Court record, which was available, has, however, been perused.

5. From the material on record, it cannot be disputed that the sale deed in question was executed after 1-10-1965 without the mandatory permission of the competent authority u/s 22 of the Act. It also appears from the record that the purchasers are in possession of the property in question from 1964 which fact is to be considered. It cannot be denied that any transfer of land by a person belonging to Scheduled Caste or Scheduled Tribe categories to a non-Scheduled Caste or non-Scheduled Tribe person without the mandatory permission of the competent authority, is invalid and can be set aside u/s 23 of the Act. In the case at hand, the appellate authority is of the view that since the land had been transferred by virtue of an unregistered document/agreement and the purchasers are in possession of the lands thereunder, the provisions of Section 23 of the Act will not be attracted with respect to the sale deed which was executed on 18-2-1969. This in our view, is not correct, A sale of immovable property of the value of Rs. 100/- and above can only be under a registered document. In the case at hand, the document, i.e. the sale deed, was registered on 18-2-1969, i.e. after the appointed date 1-10-1965 on which date, the provisions regarding the permission and consequences for failure to obtain the same were brought on the Statute Book. Thus, this would be the document which would transfer the right to the property from the vendor to the vendee and not some earlier agreement or an unregistered instrument. Hence, the validity of the sale deed dated 18-2-1969 was rightly considered by the Revenue Officer.

6. The fact that opposite parties 4 to 12 were in possession of the lands in question by virtue of some unregistered deed or agreement sometime in the year 1964, really cannot be of any assistance to them because after the appointed date, i.e. 1-10-1965, they had admittedly obtained a sale deed with respect to the lands in question without the mandatory permission as required u/s 22 of the Act. In this view of the matter and in view of the decision of a Full Bench of this Court in *Padmalochan Panda Vs. State of Orissa and Another*, : the plea of adverse possession cannot come to their aid because before the prescribed period ran out, the said opposite parties acknowledged the super title of the real owner from whom they obtained the registered sale deed, for, getting the registered sale deed from the owner on the ground that the first transaction was not in accordance with law clearly amounts to recognition of title of the real owner and results in the breaking in the running of time: (See *Corpus Juris Secundum*, Volume II, Page 627.)

7. Considering the above, we find no escape from the conclusion that the transaction i.e. sale deed dated 18-2-1969 being in contravention of the

provisions contained in Section 22 of the Act, was contrary to law and was rightly declared to be invalid by the Revenue Officer. Accordingly, the order dated 31-1-1991 passed by the Additional District Magistrate (LR), Balasore in O.L.R. Appeal No. 13 of 1989 cannot be sustained and is hereby quashed. Consequently, the order dated 23-2-1988 passed by the Revenue Officer, Bhadrak in O.L.R. Case No. 17 of 1988 is restored.

8. Before parting with the case we may observe that the provisions contained in Section 22 of the Act are for preventing the members belonging to the Scheduled Caste and Scheduled Tribe categories from being exploited. But, unfortunately, it appears that in many cases they are taking undue advantage of the said provisions. The case at hand is a glaring example thereof. In paragraph 3 of the writ application it is stated thus:

"That the petitioners who are Harijans by caste being in urgent need of money for the maintenance and livelihood wanted to sale the lands described in the schedule below and made two separate applications one by petitioners 1 and 2 in O.L.R. No. 254/68 and the other by petitioner No. 3 in O.L.R. No. 260/68 for permission to sale the land to a person who does not belong to the scheduled caste."

Thus, it is evident that the petitioners were in need of money and they wanted to sell a land and made application therefore with necessary particulars and the purchasers and the consideration must have been mentioned therein. So, the transaction thereunder was entered into of course without permission consciously and knowing that it was a sale. Consideration has been taken and utilised and after long lapse of time when the purchaser's name has been mutated during which no objection was raised merely because the price of the land by now has risen, the sellers taking advantage of the mandatory provisions initiated proceedings for declaring the sale deed invalid and in spite of this, because of the mandatory provisions, the Court can do nothing except to declare it invalid nor can it, in view of the provisions contained in Sub-section (4) of Section 23 of the Act, order refund of the consideration. This shows that even bona fide transactions for want of permission are required to be set aside after long lapse of time at the instance of the seller or his dependant, if they have second thought about the transfer by them or their ancestors. This is an aspect which needs consideration by the Law Framers.

9. The writ application is, accordingly, allowed without any order as to costs.

P.K. Mohanty, J.

10. I agree.