
(2018) 03 OHC CK 0085
In the Orissa High Court
Case No : SA No.324 of 1988

M.A. Hafiz

APPELLANT

Vs

Raghunath Maharana and others

RESPONDENT

Date of Decision : 21-03-2018

Acts Referred:

Citation : (2018) 03 OHC CK 0085

Hon'ble Judges : DR. A.K. RATH

Bench : Single Bench

Advocate : P.K. Mohapatra, S.D. Das, K.C. Bishoi, S.K. Samantray, A.K. Choudhury

Final Decision : Dismissed

Judgement

Dr. A.K.Rath, J

1. This is a plaintiff's appeal against confirming judgment in a suit for permanent injunction.

2. An area of Ac.2.10 cents of land appertaining to survey no.347/1, out of Ac.12.50 cents of land in village-Pathara is the subject matter of dispute.

3. The Case of the plaintiff is that the suit land belongs to Revenue Department, Government of Orissa. He was a lessee in respect of the suit land

since the year 1944. The lease was granted annually. The lease continued till 1979. In the year 1979, the Revenue Department, Government of Orissa

took a decision to lease out the surplus land to landless persons in public auction. Accordingly, a letter, vide Ext.A was issued to the Board of

Revenue, Orissa, Cuttack for implementation of the decision. In the year 1980, the Government modified its earlier decision and took a decision that in

the event, the surplus lands were in occupation of lessees, who are landless,

then those lands, would not be put to auction. The land shall be leased out to them on annual basis on payment of rent. On 11.04.1980, a letter was issued, vide Ext.3, to the Board of Revenue for implementation of the modified decision. The Tahasildar, Berhampur, defendant no.3 was of the view that the plaintiff was not a landless person. The plaintiff was not entitled for lease in accordance with the instructions contained in Ext.3 and the suit land was to be leased out in favour of the highest bidder amongst the landless persons for the year 1980. Though the plaintiff wanted to participate in that auction, but he was not allowed by the Tahasildar on the ground that he was not a landless person of the locality. In the said auction, defendant nos. 1 and 2 participated and became lessees in respect of the suit land. When the defendant nos.1 and 2 threatened to cultivate the suit land, the plaintiff instituted the suit seeking the relief mentioned supra.Â

4. Defendant nos.1, 3 and 4 filed a separate written statement taking the similar stand. According to them, the State is a paramount owner of the suit land. The State is entitled to deal with the property in any manner. The suit land was leased out to the defendant nos.1 and 2 in the year, 1980-81 in accordance with the instructions contained in Ext.3 and Ext.A. The plaintiff had no title over the suit land. The suit for permanent injunction was not maintainable.

5. Stemming on the pleadings of the parties, learned trial court struck ten issues. Parties led evidence, both oral and documentary, to substantiate their case. Learned trial court came to hold that the plaintiff had no title over the suit land. He was not in possession of the same. Held so, it dismissed the suit. The unsuccessful plaintiff filed T.A. No. 95 of 1987 in the court of the learned District Judge, Ganjam, Berhampur, which was eventually dismissed.

6. The appeal was admitted on the following substantial questions of law:-

Â â??a) As to whether the true import of the stipulation under Ext.3 namely â??a land-less person as on the date of leaseâ? would be the date of initial induction as a lessee in the year 1944 ?

b) As to whether the right of the plaintiff shall be governed by the Govt. instructions contained under Ext.3 or under Ext.A ?

c) In view of the fact that under Mahammadan Law there is no concept of joint family or tenancy in common, as to whether the courts below have

erred in law, in taking into consideration the income of the sons of plaintiff from their business sources as the income of the plaintiff ?

d) Whether the finding of the courts below is correct on the question of service of notice under Sec.80 C.P.C. ?

7. Learned counsel for the appellant submits that the suit land is a surplus land of the Government of Orissa. The same was leased out in favour of the plaintiff since the year 1944 on an annual lease basis. He was a leasee till 1979. The plaintiff was prevented to participate in the bid of the year 1980.

In accordance with the circulars issued by the State of Orissa vide Exts.3 and A, the suit land was to be leased out in favour of the plaintiff. The suit

land has been illegally leased out in favour of the defendant nos.1 and 2 in public auction. The plaintiff is in possession of the suit land. Both the courts

below committed an illegality in dismissing the suit.

8. Per contra, learned counsel for the respondents submits that the suit land belongs to Revenue Department, Government of Orissa. The land was

leased out to the defendant nos.1 and 2 in the year, 1980 in accordance with the instructions contained in Ext.3 and Ext.A. The plaintiff was not a

landless person. Both the courts below concurrently held that the plaintiff had no title over the suit land. He was not in possession of the suit land. The

suit for permanent injunction was not maintainable.

9. In *Anathula Sudhakar v. P. Buchi Reddy (dead) by LRs and others*, AIR 2008 SC 2033, the apex Court in para-17 of the report held thus:-

17. To summarize, the position in regard to suits for prohibitory injunction relating to immovable property, is as under:

(a) Where a cloud is raised over plaintiff's title and he does not have possession, a suit for declaration and possession, with or without a consequential

injunction, is the remedy. Where the plaintiff's title is not in dispute or under a cloud, but he is out of possession, he has to sue for possession with a

consequential injunction. Where there is merely an interference with plaintiff's lawful possession or threat of dispossession, it is sufficient to sue for an

injunction simpliciter.

(b) As a suit for injunction simpliciter is concerned only with possession, normally the issue of title will not be directly and substantially in issue. The

prayer for injunction will be decided with reference to the finding on possession. But in cases where de jure possession has to be established on the

basis of title to the property, as in the case of vacant sites, the issue of title may directly and substantially arise for consideration, as without a finding thereon, it will not be possible to decide the issue of possession.

(c) But a finding on title cannot be recorded in a suit for injunction, unless there are necessary pleadings and appropriate issue regarding title [either specific, or implied as noticed in *Annaimuthu Thevar* (supra)]. Where the averments regarding title are absent in a plaint and where there is no issue relating to title, the court will not investigate or examine or render a finding on a question of title, in a suit for injunction. Even where there are necessary pleadings and issue, if the matter involves complicated questions of fact and law relating to title, the court will relegate the parties to the remedy by way of comprehensive suit for declaration of title, instead of deciding the issue in a suit for mere injunction.

(d) Where there are necessary pleadings regarding title, and appropriate issue relating to title on which parties lead evidence, if the matter involved is simple and straightforward, the court may decide upon the issue regarding title, even in a suit for injunction. But such cases, are the exception to the normal rule that question of title will not be decided in suits for injunction. But persons having clear title and possession suing for injunction, should not be driven to the costlier and more cumbersome remedy of a suit for declaration, merely because some meddler vexatiously or wrongfully makes a claim or tries to encroach upon his property. The court should use its discretion carefully to identify cases where it will enquire into title and cases where it will refer to plaintiff to a more comprehensive declaratory suit, depending upon the facts of the case.â??

10. Reverting to the facts of this case and keeping in view the enunciation of law laid down in *Anathula Sudhakar* (supra), this Court finds that the State of Orissa is a paramount owner of the suit land. The suit land was put to an auction annually in favour of different persons. The Government of Orissa took a conscious decision to put the suit land in auction and grant lease annually in favour of the landless persons. In the year, 1980, the suit land was put to auction. Defendant nos.1 and 2, who were landless persons, participated in the bid. Accordingly, the suit land was leased out in their favour. Plaintiff had no title over the suit land. Both the courts below concurrently held that the plaintiff was not in possession of the suit land. Thus

simple suit for permanent injunction is not maintainable. The substantial questions of law are answered accordingly.

11. In the wake of aforesaid, the appeal, sans merit, deserves dismissal. Accordingly, the same is dismissed. There shall be no order as to costs.