

(2017) 12 OHC CK 0005

In the Orissa High Court

Case No : 33 of 1987

Madan Mohapatra (deleted) and others

APPELLANT

Vs

Rama Chandra Das and others

RESPONDENT

Date of Decision : 01-12-2017

Acts Referred:

[Orissa Estates Abolition Act, 1951](#), [Section 8A](#)

Citation : (2017) 12 OHC CK 0005

Hon'ble Judges : A.K. Rath

Bench : SINGLE BENCH

Advocate : S.N. Satapathy

Judgement

1. This is a defendants" appeal against confirming judgment.
2. The plaintiffs-respondents instituted the suit for permanent injunction. The case of the plaintiffs was that the suit tank was the ex-intermediary interest of the plaintiffs and their cosharers. The estate vested in the State Government in or about 1956-57. They preferred claim. The tank was settled with them. Rent was assessed. Subsequently, the A.D.M., Puri in Estate Abolition Appeal No.16 of 1976 set aside the order of settlement made in their favour. Thereafter, they filed O.J.C. No.1685 of 1979 before this Court, which is pending adjudication. It was further pleaded that the plaintiffs and their predecessors-in-interest have been utilisinig the water of the disputed tank for irrigation purposes, rearing fish and exercising all acts of ownership. The defendants have no right, title and interest over the suit property.
3. The defendants resisted the claim of the plaintiffs on the ground that the suit tank is communal in nature. They and the members of their community are using the water of the tank for irrigation purposes, drinking and bathing etc. since generations. The plaintiffs have no semblance of right, title and interest over the same.

4. On the interse pleadings of the parties, learned trial court struck eleven issues. Parties led evidence, both oral and documentary. Learned trial court came to hold that the estate vested in the State in the year 1956-57. No claim was filed by the intermediary under Sec.8-A of the Orissa Estate Abolition Act (in short, "O.E.A. Act") within the statutory period. Rent schedule granted in favour of the plaintiffs in the claim case of the year 1963- 64 cannot be held to be settled under any of the provisions of the O.E.A. Act. Consequently the order of settlement by the O.E.A. Collector and the reversal order in appeal, vide Ext.A, are of no avail to either party. The order of settlement of land was invalid and without jurisdiction. On account of failure on the part of the plaintiffs to prefer claim within the prescribed period, the estate vested in the State and their right to possess the suit properties became extinguished. The plaintiffs have been exercising right of possession over the suit properties. The defendants have not been able to establish that the properties are communal in nature and they are in possession of the suit property. The civil court has jurisdiction to entertain the suit. Held so, it decreed the suit. The unsuccessful defendants challenged the judgment and decree of the learned trial court before the learned District Judge, Puri, which was subsequently transferred to the court of the learned Second Additional District Judge, Puri and renumbered as T.A. No.7/70 of 1986/88. Learned lower appellate court held that merely because the suit tank was recorded as "Sarva Sadharan" in the R.O.R. of the year 1928, the assertions of the defendants that the tank continue to retain their communal character cannot be acceded to, particularly in view of the vesting operations which took place in 1952-53. Held so, it dismissed the appeal.

5. The second appeal was admitted on the substantial questions of law enumerated in ground nos.5, 6, 9 and 15 of the memorandum of appeal. The same are: "5.For that the State is the owner of the said suit tanks in question under the provisions of the O.E.A. Act, the said tanks were vested in the State. After vesting, the respondents have not preferred any objection before the Estate Abolition Authorities. In 1963-64, the respondents only filed claim cases after a long lapse of time. The O.E.A. Collector has decided the case in favour of the respondents. But on appeal by the appellants, the order of the Estate Abolition Collector has been set aside. Against the said order in O.E.A. Appeal No.16 of 1976, the respondents have filed O.J.C. No.1685 of 1979 before this Hon"ble Court which is pending for hearing. Since the matter is subjudice before this Hon"ble Court, the Courts below have no right to entertain the suit of the respondents in question. The suit is barred under Section-39 of the O.E.A. Act.

6. For that since the State is the owner of the land and the tanks are vested in the State under the provisions of the O.E.A. Act, the State being the absolute owner, should have been made a party in the suit. Since the State has not been made a party in the suit, the suit is not maintainable under the law.

9. For that the suit is not maintainable under the provision of Section 39 of the O.E.A. Act. The suit is a bar. The learned courts below have not taken the same

into consideration and they have wrongly decided the case confusing the provisions of the law under the O.E.A. Act.

15. For that the learned courts below should have held that a mere suit for injunction is not maintainable when the plaintiff-respondents have only claimed their possession over the tanks, though they have no right and title over the suit tanks."

6. Heard Mr. S.N. Satpathy, learned counsel for the appellants. None appears for the respondents.

7. Mr. Satpathy, learned counsel for the appellants submits that the suit tank originally belonged to ex-intermediary. The same vested in the State after coming into operation of the O.E.A. Act. In the ROR of the year 1927, Ext.4, the suit tank recorded as Sarva Sadharan. But then the same was wrongly recorded in the name of the plaintiffs in the ROR published in the year 1977. The plaintiffs filed claim case before the O.E.A. Collector in the year 1963-64. The same was allowed. Assailing the order passed by the O.E.A. Collector, the defendants filed O.E.A. Appeal No.16 of 1976 before the A.D.M., Puri. The order passed by the O.E.A. Collector was set aside. Thereafter, the plaintiffs filed O.J.C. No.1685/79 before this Court, which is pending adjudication. In view of the same, the simple suit for permanent injunction is not maintainable.

8. Before proceeding further, it is apt to refer to the decision of the apex Court in the case of Anathula Sudhakar vs. P. Buchi Reddy (Dead) by L.Rs. and others, AIR 2008 SC 2033 . In paragraph 11 of the report, the apex Court held: "11. The general principles as to when a mere suit for permanent injunction will lie, and when it is necessary to file a suit for declaration and/or possession with injunction as a consequential relief, are well settled. We may refer to them briefly.

11.1) Where a plaintiff is in lawful or peaceful possession of a property and such possession is interfered or threatened by the defendant, a suit for an injunction simpliciter will lie. A person has a right to protect his possession against any person who does not prove a better title by seeking a prohibitory injunction. But a person in wrongful possession is not entitled to an injunction against the rightful owner.

11.2) Where the title of the plaintiff is not disputed, but he is not in possession, his remedy is to file a suit for possession and seek in addition, if necessary, an injunction. A person out of possession, cannot seek the relief of injunction simpliciter, without claiming the relief of possession.

11.3) Where the plaintiff is in possession, but his title to the property is in dispute, or under a cloud, or where the defendant asserts title thereto and there is also a threat of dispossession from defendant, the plaintiff will have to sue for declaration of title and the consequential relief of injunction. Where the title of plaintiff is under a cloud or in dispute and he is not in possession or not able to establish possession, necessarily the plaintiff will have to file a suit for

declaration, possession and injunction."

9. In the sabak R.O.R., the suit tank has been recorded as Sarva Sadharan. The suit tank originally belonged to exintermediary. The same vested in the State after coming into force of the O.E.A. Act. The plaintiffs laid claim case before the O.E.A. Collector in the year 1963-64. The same was allowed. Feeling aggrieved, the defendants filed O.E.A. Appeal No.16 of 1976 before the A.D.M., Puri. The appellate authority set aside the order of the O.E.A. Collector and allowed the appeal. Thereafter, the plaintiffs filed O.J.C. No.1685/79 before this Court. Thus the irresistible conclusion is that the title of the suit tank is in dispute. In view of the same, the simple suit for permanent injunction is maintainable. Further, no prayer is made to set aside the order passed by the appellate authority. But then the learned trial court travelled beyond its jurisdiction and held that the order passed by the appellate authority under the O.E.A. Act is invalid and without jurisdiction. Further the learned trial court held that the suit land vested in the year 1956-57. No claim case was filed by the plaintiffs under Sec.8- A of the O.E.A. Act within the statutory period. So the rent schedule granted in favour of the plaintiffs in the claim case of the year 1963- 64 cannot be held to be settled under the provisions of the O.E.A. Act. In the same paragraph, it held that the order of settlement by the O.E.A. Collector and the reversal order in appeal are of no avail to either party. On account of failure on the part of the plaintiffs to prefer claim within the prescribed period the estate vested in the State and their right to possess the suit properties became extinguished. The judgment suffers from internal inconsistency. The substantial questions of law are answered accordingly.

10. A priori, the impugned judgments are set aside. The appeal is allowed. Consequently the suit is dismissed. There shall be no order as to costs.

11. Before parting with the case, this Court observes that since the writ petition is pending adjudication before this Court, Registry shall bring to the notice of the Court of this judgment for hearing.