
(1964) 10 OHC CK 0001
In the Orissa High Court
Case No : Second Appeal No. 170 of 1963

Madhab Padhan and Others	Vs	APPELLANT
Patele Thakurani and Others		RESPONDENT

Date of Decision : 01-10-1964

Acts Referred:

Citation : (1965) 31 CLT 549

Hon'ble Judges : Barman, J

Bench : Single Bench

Advocate : K.C. Jagadebrai, for the Appellant; L.K. Das Gupta and G.N. Sen Gupta, for the Respondent

Final Decision : Dismissed

Judgement

Barman, J.—Defendants are Appellants. This appeal arises out of a suit filed by the Plaintiffs for a declaration that they are entitled to collect tolls from shop-keepers during the Melan Jatra which is held every year on the land belonging to a deity and recovery of Rs. 25 - alleged to have been unauthorisedly collected by the Defendants.

2. Plot No. 23 in khata No.313 is Bijesthali of the deity Plaintiff. The villagers of Pratap Ramachandrapur hold Melan Jatra every year. The Plaintiffs have been collecting tolls on behalf of the deity from the shop-keepers who have their shops on the land. The Plaintiffs' case is that they are Marfatdars of the deity Patele Thakurani. It is said that on April 14, 1960 during Melan Jatra the Defendants who are residents of Pratap Ramachandrapur, Malasahi came and collected some tolls from the shop-keepers. The Plaintiffs protested to such unauthorised collection by the Defendants. Thereafter on May 6, 1960 the Plaintiffs filed the suit for reliefs aforesaid. The defence is that the Defendants had collected voluntary contributions given by the shop-keepers and not tolls; the Plaintiffs have no right to collect tolls from the shop-keeper.

3. The trial Court dismissed the suit on the finding that the Plaintiffs have no

customary right to collect tolls and that the Defendants raised voluntary subscriptions from the shop keepers. In appeal, the Plaintiffs did not press their claim for damages. The learned lower appellate Court reversed the decision of the trial Court and decreed the suit in favour of the Plaintiffs on the finding that the Plaintiffs have right to collect tolls because it is an incident to the ownership of the land itself. Hence this second appeal.

4. The points urged on behalf of the Defendants herein are these the record-of-rights Ext. 5 mentions that the villagers withhold Melan Jatra every year on the land. The Defendants point is that by reason of this note in the record-of-rights the villagers are given exclusive possession of the land during the three days of Melan Jatra and accordingly they have a right to collect subscriptions for the three days. Their point is that what they collect for these three days during the Melan Jatra is voluntary contribution from the shop-keepers and not tolls. They submit that no custom for realisation of tolls nor any such collection in assertion of any right has either been pleaded in the plaint or proved. In support of their contention the Defendants rely on the finding of the trial Court that the Plaintiffs have failed to establish any right or custom for collection of tolls or any other dues from the shop-keepers of Melan Jatra.

5. The Defendants contentions, however, were successfully repelled on behalf of the Plaintiffs on these grounds In the record-of-rights Ext. 5 the entire khata including the suit land is recorded in the name of the deity Patelei Thakurani through Marfatdars mentioned therein. The suit plot No. 23 is recorded as Nij dakhal Bijesthali where the deity is located. Thus the plot is in khas possession of the deity. In the remarks column there is a record to the effect that the villagers in general hold their Melan. It is clear that this does not give the villagers any ownership nor a right of possession in respect of the land. The Plaintiffs' title as Marfatdars representing the deity is not affected by this note in the record-of-rights giving the villagers mere permission to hold Melan. During the Melan Jatra the shopkeepers from different surrounding villages congregate and hold shops on the deity's land. They all assemble on the land on the occasion of Melan Jatra. The right to collect the tolls vests in the ownership of the land and not in the persons who hold Melan for three days in a year. It is the Plaintiffs who have the right to collect the tolls. The Plaintiff such right to collect tolls cannot be treated to have been suspended during these three days of Melan. If indeed the villagers (Defendants) had a right to collect tolls during these three days then they should have pleaded such custom and proved the same.

6. The learned lower appellate Court's approach to the real point in issue is correct. The reasoning on which he came to the conclusion in favour of the Plaintiffs is that the Plaintiffs' right to collect tolls is incidental to the ownership of the land and that such right need not be specifically mentioned in the khatian the right to collect tolls from the shop-keepers need not be granted by the Government and such right need not be noted in the record-of-rights it is fundamental that the owner of the land has every right to impose his conditions

for use of his land by others. What rightly weighed with the learned lower appellate Court is the position that simply because a Melan Jatra is held on the deity's land, no right is conferred on the shopkeepers to make free use of the land, thus depriving the Plaintiffs of their right to collect tolls from them during the Melan Jatra.

7. This view is fully supported by a Division Bench decision of the Calcutta High Court in *Bijoy Singh Chopra Vs. Pyari Mohan Kundoo and Another*, where it was held that a market toll can be levied by the person who has some right in respect of the market place in question, a person who has either such an interest in the soil of the market place which entitles him to have khas possession, or a person who has an exclusive licence from the owner of the site to use the site it is a loose way of speaking to say that the right to levy tolls rests on custom the practice of levying tolls would only be evidence of an implied contract, when no express contract is alleged. In the present case the Plaintiffs are Marfatdars of the deity in khas possession (Nij dakhla) of the land as recorded in the record-of rights. The right to collect tolls from the shop-keepers is an incident to such ownership of the land.

8. In this view of the case the decision of lower appellate Court is upheld. This appeal is dismissed with costs the learned accordingly.