
(1958) 03 OHC CK 0015
In the Orissa High Court
Case No : Second Appeal No. 254 of 1954

Madhaba Sabar

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 29-03-1958

Acts Referred:

Administration of Orissa States Order, 1948 — Section 4
Constitution of India, 1950 — Article 154, 166
Transfer of Property Act, 1882 — Section 111, 112, 114, 115

Citation : (1958) 24 CLT 433

Hon'ble Judges : Das, J

Bench : Single Bench

Advocate : S.K. Ray, for the Appellant; M.S. Rao and G.K. Misra and A.G., for the Respondent

Final Decision : Dismissed

Judgement

Das, J.—This is a Plaintiff's appeal against the concurrent findings of the courts below dismissing his suit for a declaration that the order of the Board of Revenue dated June 10, 1952, is illegal and ultra vires and hence all the subsequent proceedings are without any legal validity. In the suit the Plaintiff also prayed for possession and for a decree for accounts from the date of his dispossession to the date of reinstatement by ejectment of Defendant 2 to 9.

2. The Plaintiff's case was that one Arta Raiguru the ancestor of Defendants 2 to 9 acquired the suit village sometime in the year 1888 from the then Maharaja of Kalahandi by way of "Guru Dakhina" and the present Defendants 2 to 9 are the Maufidars of this village. Soon after the acquisition of the village, the then Maufidars permanently settled it with the grand-father of the Plaintiff, Bhagwan Sabar, as a Gountia or sub-proprietor. Bhagwan thereafter brought the lands of the village under cultivation by settling tenants. Thus, Bhagwan and after him his successors including the present Plaintiff had all along been in actual possession of the village. Although the settlement between the Maufidar and the Gountia

was a permanent one, the State used to approve periodically of the arrangement made between them and the management of the village was carried on with certain duties to the state. During the settlement of 1922, the State granted a patta, Ext. 8, to the Plaintiff in whose favour the Plaintiff in his turn executed a Kabuliyat undertaking to abide by the condition of the lease. Under the terms of the lease, the Maufidars were to get annually from the year 1922 onwards a sum of Rs. 588.70 in cash and a Rasad paddy of 23 pastamas and 15 mans valued at Rs. 185.80 besides a sum of Rs. 96.19 as Nistar. The Plaintiff had been regularly paying the dues of the Maufidars. But for unavoidable reasons the paddy dues of two of the Maufidars, Narayan Raiguru and Damodar Raiguru, Defendants 2 and 8 could not be delivered for the years 1946 to 1950. Defendants 2 and 8 filed two suits against the Plaintiff in the years 1948 and 1950 and obtained decrees for the value of the paddy with interest thereon (vide Exts. 14/A and 15). The Plaintiff thereafter paid up the decretal amounts in full. On February 27, 1950 Defendants 2 to 9 presented an application before the Collector of Kalahandi making various allegations against the Plaintiff and praying for his eviction from the suit-village. The Collector rejected their prayer for eviction. On appeal, the Board of Revenue by its order dated 10.6.1952 (Ext. 17/a) held that the failure of the Plaintiff to deliver the rent to the Maufidars was a good ground for his eviction by the Revenue Authorities and accordingly passed orders directing the ejectment of the Plaintiff from the suit village. The Board had also directed by that order that the management of the village would revert to the Maufidars, Defendants 2 to 9. The Plaintiff thereafter filed an application for review and that application was rejected in August, 1952 (Ext. J.). Accordingly in pursuance of the order of the Board of Revenue, the Collector of Kalahandi put Defendants 2 to 9 in possession in August 1952 and the Plaintiff after having been so ejected from the suit-village, commenced the present suit.

3. The Plaintiff further alleged in the plaint that non-payment of the dues of the Maufidars was not a condition for breach whereof he could be evicted by the State under Clause 26 of the Patta (Ext. 8) in as much as his position is that of a sub proprietor under the Maufidars, who are the proprietors of the village and the only remedy of the Maufidars for the non-payment of their dues was not in seeking their eviction, but only in suing him in the revenue court for recovery of the amount due. Thus the order of ejectment is illegal and ultra vires.

4. The defence of the Defendants inter alia was that Arta Raiguru, the ancestor of Defendants 2 to 9, was the Maufidar-Gounth of the suit-village and not a simple Maufidar and that the Plaintiff and his ancestors were mere Sikimdars or Sikimi Gountias without any permanent right whatsoever. The Maufidar-Gountias were entitled to certain quantity of paddy in kind and not to a sum of Rs. 185.80 in cash as alleged in the plaint and that according to the terms of the lease, the Plaintiff was liable to be ejected for non-payment of the land revenue. The Plaintiff thus being a habitual defaulter proceedings against him for eviction were properly taken and that the order of the Board of Revenue was not therefore illegal or ultra vires. It was further averred that the suit as framed is not

maintainable and that the civil court has no jurisdiction to entertain the suit as the Revenue Court has the exclusive jurisdiction and the order of the Board of Revenue is final and is not liable to be challenged in the civil court.

5. The learned Subordinate Judge who heard the suit in the first instance held that Defendant-2 to 9 are the Maufidars-Gountias of the suit-village, that a sikimi-gountia right was conferred on the Plaintiff from time to time for a limited period. Thus there was a clear legal relationship between the Plaintiff on the one hand and Defendants 2 to 9 on the other. The Plaintiff having become a habitual defaulter in payment of the Rasad paddy to the Maufidar-Gouotias from 1946 to 1950, he is clearly liable to be ejected. Accordingly he held that the order of the Board of Revenue dated June 10, 1952 and the subsequent delivery of possession to Defendants 2 to 9 are not illegal nor ultra vires and the order of the Board of Revenue being final in the matter of eviction of the Plaintiff, suit is not maintainable in a civil court.

6. On appeal, by the Plaintiff, two contentions were raised before the learned District Judge; (1) whether the Plaintiff had any permanent right, title and interest over the disputed village Chakuli and (2) whether the ejectment of the Plaintiff from the suit village is in any way illegal or ultra vires and whether he has any right to recover back possession and management of the suit. village from Defendants 2 to 9. Both these contentions were carefully examined by the learned District Judge before whom the jurisdiction of the Board of Revenue to eject the Plaintiff was not in dispute. Both these contentions were negatived by the learned District Judge and the suit was ordered to be dismissed.

7. Mr. S.K. Roy, learned Counsel on behalf of the Appellant raised the following contentions in this appeal: (1) On a proper construction of Ext. 5, no breach has occurred. Hence the order of ejectment is illegal; (2) No notice u/s 111(g) of the Transfer of Property Act was given and hence the proceeding was not maintainable; (3) There has been a waiver of forfeiture u/s 112 of the Transfer of Property Act, 1882; and (4) The Court should have relieved the leases against forfeiture u/s 115.

8. Mr. Roy contended that Ext. 5 should be read along with Ext. 19, the lease in favour of Defendants 2 to 9 granted by the Maharaja of Kalahandi in the year 1922. it was contended by Mr. Roy that beneficial construction should have been placed in favour of the leases and unless a complete breach has occurred no forfeiture can entail. Mr. Roy further contended that even assuming that there is a forfeiture, no procedure has been laid down in the lease itself for the eviction of the Plaintiff. It was also urged that the Administration of the Orissa States. Order, 1948, in Section 4(b) lays down that as respects to those matters which are not covered by the enactments applied to the Orissa States under subparagraph (a), all laws in force in any of the Orissa States prior to the commencement of this Order, whether substantive or procedural and whether based on custom and usage or statutes, shall, subject to the provisions of this Order, continue to remain in force until altered or amended by an Order under

the Extra-Provincial Jurisdiction Act, 1947 (Central Act 47 of 1947). The proviso to that section states:

That the powers that were exercised by the Ruler of each such State under any of those laws prior to the commencement of this Order shall be exercised by the Provincial Government or any other office specially empowered in this behalf by that Government.

It was argued by Mr. Roy that under Article 154 of the Constitution the executive power of the State is vested in the Governor and is exercised by him either directly or through officers subordinate to him in accordance with this Constitution. He also referred to Article 166 which provides for the conduct of Government business. The simple answer to this contention of Mr. Roy is that Clause (6) of the Administration of Orissa States Order, 1948, provides that:

Notwithstanding anything contained in the proviso to such-paragraph (b) of paragraph 4 of this order, the Chief Administrator and Special Commissioner shall be the highest revenue authority in all Orissa States and shall exercise all original, appellate or revisional revenue powers, which were exercised by the Ruler of the States prior to the commencement of this Order. He may either on application by a party or on his own motion, call for the records of any proceeding of any subordinate revenue authority and pass such orders as he thinks fit and may also delegate any or all .of his revenue power, either conditionally or unconditionally to any other revenue officer subordinate to him.

9. Before dealing with the legal questions raised I would like to dispose of a question of fact first. The learned District Judge on a careful consideration of the evidence on record came to the conclusion that the Plaintiff failed to establish that he had any permanent right or interest over the village-in-suit or that he had any right of management of the suit-village. Certain facts In detail are necessary to appreciate the above finding. It was in the year 1888 that the disputed village Chakuli was acquired by the ancestors of Defendants 2 to 9 from the then Maharaja of Kalahandi. The Plaintiff wanted to rely upon Ext. A dated April 3, 1888, passed by the then Superintendent of the Kalahandi State to show that his ancestors had permanently settled in the land. This has been negated by the learned District Judge on the ground that one Sanu Sabara was the sikimidar of the village and that sikimidar was dismissed by the Maufidar Sibram Raiguru, the admitted ancestor of Defendants 2 to 9 and with the consent and approval of that Maufidar, the State granted a sikimi Patta in favour of Bhagwan, the grand-father of Plaintiff. Before the lower appellate court the learned pleader on behalf of the Plaintiff rightly conceded that the Plaintiff was not a sub-proprietor as he had no proprietary right but had only right of management conferred upon him by the State. From Ext. 1, the Khewat of the disputed village for the year 1904-5, it is clear that Makunda Sabar, the father of the Plaintiff stood recorded as a mere sikimidar under the ancestors of Defendants 2 to 9. Further from Ext. 2, another Khewat of the year 1911.12, it is apparent that in the year 1880 a sikimi right was granted in favour of Bhagwan, the grand-father

of the Plaintiff for a period of only three years and that the said right was extended for a further period of three years in 1891 and that after the death of the sikimidar, Bhagwan Sabar, the right of a sikimi-gountia was conferred on behalf of the Maufidars on Makunda, son of Bhagwan for a period of seven years. Again in the year 1922, the maufi-lease of the village was granted to the ancestors of Defendants 2 to 9 and a sikimi lease without any protection was granted to the Plaintiff (Vide Ext. C dated 28.12.1912). From the orders dated October 10, 1922 Ext. 13 and 13/A, corresponding to Ext. D and D/1 of the Dewan and Maharaja respectively, it appears that the State granted the Patta Ext. 3 In favour of the Plaintiff for twenty years who in his turn executed a Kabuliyat in favour of the State. Now Clause 26 of this Patta provides that for breach of any condition set forth therein, the Plaintiff would be liable to ejectment. Thus, the learned District Judge is quite correct in his finding that the Plaintiff had acquired no permanent right in the suit-village.

10. With regard to the contention of Mr. Ray in respect of the various provisions of the Transfer of Property Act, it would be sufficient to refer to a decision of the Supreme Court in *Namdeo Lokman Lodhi Vs. Narmadabai and Others*, wherein it was held by Mahajan, J. (as he then was) that:

The provision of Section 111 () as to notice in writing as the preliminary to a suit for ejectment based on forfeiture of a lease is not based upon any principle of justice, equity or good conscience and cannot govern leases made prior to the coming into force of the Transfer of Property Act, 1882, or to leases executed prior to 1-4-1930. The rights and obligations under these leases have to be determined according to the rules of law prevailing at the time and the only rule applicable seems to be that a tenant cannot by his unilateral act and by his own wrong determine the lease unless the lessor gives an indication by some unequivocal expression of intention on his part of taking advantage of the breach. It is erroneous to suppose that every provision in the Transfer of Property Act and every amendment effected is necessarily based on principles of justice, equity and good conscience. It has to be seen in every case whether the particular provision of the Act relied upon restates a known rule of equity or whether it is merely a new rule laid down by the legislature without reference to any rule of equity and what is true nature and character of the rule.

The granting of relief against forfeiture u/s 114 of the Transfer of Property Act is no doubt in the discretion of the Court, but in exercising the discretion each case must be judged itself, the delay, the conduct of the parties and the difficulties to which the landlord has been put should be weighed against the tenant.

It is a maxim of equity that a person who comes in equity must do equity and must come with clean hands and if the conduct of the tenant is such that it disentitled him to relief in equity, then the court's hands are not tied to exercise it in his favour.

11. Mr. R.K. Ramdhyani of the Indian Civil Service in his report on Land Tenures

and the Revenue System of Orissa and Chattishgarh States dealt with the revenue history and settlement of Kalahandi at P. 109 of the report. In paragraph 11 of his report at P. 111 he stated that there is no revenue law in the State of Kalahandi and the relation between the State and the Gountia and their rights are regulated by the terms of the lease granted to the Gountia. With regard to the recovery of land revenue Mr. Ramdhyanī further states that the Central Provinces procedure is followed for the recovery of land revenue and there are no separate rules made by the State. Hence the law applicable at the time when the lease was granted was the Central Provinces Rules and the terms embodied in the lease deed itself.

12. It may be remembered in this connection that the Transfer of Property Act was not extended to the former feudatory State of Kalahandi. Thus the argument advanced by Mr. Ray under the various provisions of the Transfer of Property Act are bound to fail. The learned District Judge took into consideration Exts. 15 and 15/A, and hold that since during the pendency of the suit, all the Maufidar-Gountias moved the Collector On February 27, 1950, for eviction of the Plaintiff, there is no question of any waiver so far as the defaults in 1949 and 1950 are concerned and his finding that the Plaintiff became a habitual defaulter in respect of the payment of Rasad paddy to the Maufidars from 1949 to 1950 stands unassailable.

13. Clause 26 of Ext. 3 in unmistakable terms refers to the breach of any of the conditions mentioned above and provides that such a breach of condition would entail removal or ejectment of the Plaintiff from the suit-village. It appears that the conditions contemplated therein are not limited or confined only to paragraphs 1 to 24. It refers to the recitals made above it also. Mr. M.S. Rao relying upon a decision of the Patna High Court reported in *Mangtu Lal Bagaria v. Secretary of State* 187 I.C. 127, contended that the cess which is payable under the Act may be recovered either under the Public Demands Recovery Act or by a suit. The question whether cess was or was not recoverable is a question to be decided by the Revenue Court. The Revenue Court has the power to issue the certificate, and if that Court has decided, rightly or wrongly, that the cess was recoverable and the claim made for the recovery was not barred by limitation, a suit cannot be entertained in a civil court to set aside that decision. A civil court can entertain a suit only if the order of the revenue court is without jurisdiction or in excess of jurisdiction and not because the decision pronounced by the Court is incorrect. It cannot be held in the present case that the decision of the Revenue Court was without jurisdiction or in excess thereof, and accordingly I would hold that the order as passed by the Board of Revenue is a valid and legal order. Thus there does not appear to be any substance in the contentions raised by Mr. Ray.

14. In the result, I would dismiss this appeal with costs.

Appeal dismissed.