
(1974) 01 OHC CK 0032

In the Orissa High Court

Case No : Second Appeal No. 237 of 1970

Mallia Budhi Thakurani and Another

APPELLANT

Vs

Udaynath Parida and Others

RESPONDENT

Date of Decision : 02-01-1974

Acts Referred:

Orissa Estates Abolition Act, 1951 — Section 7, 8A

Citation : AIR 1974 Ori 194 : (1974) 40 CLT 254

Hon'ble Judges : G.K. Misra, C.J

Bench : Single Bench

Advocate : P. Mohanty, for the Appellant; B. Rath, for the Respondent

Final Decision : Dismissed

Judgement

G.K. Misra, C.J.—Plaintiff No. 1 is a deity and plaintiff No. 2 is the Marfatdar. Their case is that plaintiff No. 1 was in khas possession of the disputed property as an intermediary on the date of vesting. On an application made u/s 7 of the Orissa Estates Abolition Act, 1951 the lands were settled on plaintiff No. 1 as he was the intermediary in khas possession. It was admitted in the plaint itself that the defendants 1 to 4 were recorded as occupancy rayats in respect of the suit lands in the last current settlement of the year, 1931. Their case, however, was that in fact defendants 1 to 4 were not occupancy tenants, they were influential men of the locality and to exercise control over plaintiff No. 2 defendants 1 to 4 were nominally recorded as occupancy rayats. As defendants 1 to 4 were recorded as rayats they transferred the disputed property in favour of defendants 5 and 6 by a registered sale deed (Ext B) on 7-1-1957 without any consideration. The suit is filed for declaration of title and confirmation of possession, in the alternative for recovery of possession.

Defendant No. 5 alone contested. His case is that the disputed properties were the rayati lands of defendants 1 to 4 which he and defendant No. 6 purchased for consideration. No notice had been served on them as to the fact that an application had been filed by plaintiffs 1 and 2 u/s 7 of the Orissa Estates

Abolition Act and the settlement made by the Collector thereunder is without jurisdiction and is not binding on defendants 5 and 6. He also denied the averment in the plaint that the disputed properties had been nominally recorded in the name of defendants 1 to 4 for exercise of adequate control on plaintiff No. 2 and for proper discharge of duties as a Marfatdar.

2. The learned courts below have concurrently found that defendants 1 to 4 were occupancy rayats of the disputed lands and that they had not been nominally recorded as occupancy tenants in 1931. They further held that the Collector had no jurisdiction to settle the disputed lands on plaintiff No. 1 as the properties belonged to defendants 5 and 6 who were occupancy tenants thereof.

The finding that defendants 1 to 4 were the occupancy rayats of the disputed, lands in the current settlement of the year, 1931 in their own right, title and interest is a pure finding of fact and is not assailable in Second Appeal.

3. The only question for consideration in this appeal is whether the settlement effected by the Collector of the disputed properties on plaintiff No. 1 is valid or without jurisdiction. No documents have been produced by the plaintiffs that the disputed properties were settled on plaintiff No. 1 by the Collector u/s 7. Only two rent receipts (Exts. 1 and 2/a) were filed. The learned appellate court has held that those two documents have not been properly proved and no reliance can be placed on those documents in proof of settlement.

4. The law on the point is no longer *res integra*. It has been held by a Bench of this Court in (1973) 39 C LT 975 (*V. Krishna Rao v. Kotini Sitaram*) that if an occupancy rayat does not contest the claim of an intermediary in khas possession after due service of notice then the settlement made by the Collector u/s 7 in favour of the intermediary in khas possession is valid. It has also been held by another Bench decision of this Court in (1971) 2 C WR 326 (*Baikuntha Das v. Sabitri Devi*) that when service of notice u/s 8-A is challenged it is incumbent upon the person on whom the land has been settled to prove the service of the notice to the satisfaction of the court and if no notice has been served to enable a claimant to resist the claim then the order passed by the Collector in effecting the settlement is without jurisdiction and does not create any right in favour of the intermediary claiming the land to be in khas possession.

5. In view of the aforesaid principles well settled by the decisions of this Court it was for the plaintiffs to prove that in fact a settlement was made by the Collector in favour of plaintiff No. 1 settling the lands on it as the intermediary in khas possession. The plaintiffs should have proved that there was due service of public notice as enjoined upon by law, when the contesting defendant specifically challenged that he had no knowledge of such a proceeding and there was no due service of notice. If the plaintiffs failed to prove the settlement, then the title of defendants 5 and 6 as occupancy rayats on the basis of their purchase from defendants 1 to 4 cannot be resisted. The plaintiffs have no claim either for declaration of title as occupancy rayats or for confirmation or in the alternative

for recovery of possession.

6. Though the learned courts below were not alive to the aforesaid legal position, their ultimate conclusion cannot be assailed in Second Appeal.

7. In the result the Second Appeal fails and is dismissed. In the circumstances, there will be no order as to costs of this Court.