

(2018) 04 OHC CK 0081
In the Orissa High Court
Case No : S.A.No.190 of 1991

MANGULI CHARAN NAYAK .DEAD. THROUGH HIS L.RS. APPELLANT
Vs
STATE OF ORISSA AND ANOTHER RESPONDENT

Date of Decision : 23-04-2018

Acts Referred:

Orissa Tenancy Act, 1913 — Section 5(2), 23, 24, 24(1), 25

Citation : (2018) 04 OHC CK 0081

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

Bench : Single Bench

Advocate : Bhuban Mohan Bhuyan, Swayambhu Mishra

Final Decision : Dismissed

Judgement

Dr.A.K.RATH, J.

1. Plaintiff is the appellant against a reversing judgment in a suit for declaration that he is an occupancy raiyat, order of eviction passed in the encroachment case is illegal and permanent injunction.

2. The case of the plaintiff is that the suit land is the Government Anabadi land. His father along with him reclaimed the same. After death of his father, he is in possession of the suit land. He raised crops for more than 40 years. He has acquired occupancy right over the same. While matter

stood thus, the Tahasildar, Banki, defendant no.2 initiated Encroachment Case No.67 of 1978 against him under the Orissa Prevention of Land

Encroachment Act (O.P.L.E. Act). Order of eviction was passed. Thereafter he filed an appeal. The same was dismissed. With this factual scenario,

he instituted Title Suit No.18 of 1982 in the court of the learned Munsif, Banki

3. Defendant no.2 entered contest and filed a written statement denying the

assertions made in the plaint. It was pleaded that the plaintiff had not acquired the occupancy right over the land. Encroachment case was initiated against him. The suit land belongs to the State Government. Neither the plaintiff nor his predecessor-in-interest were in possession of the suit land. Since the plaintiff had encroached upon the suit property, encroachment proceeding was initiated against him.

4. On the inter se pleadings of the parties, the learned trial framed five issues. Parties led evidence, oral and documentary, to substantiate their cases.

The learned trial court decreed the suit holding inter alia that the plaintiff is in possession of the suit land for more than 30 years continuously to the knowledge of the State and, as such acquired occupancy right over the same. Felt aggrieved, the defendants filed Title Appeal No.60 of 1989 before

the learned Second Additional District Judge, Cuttack. The appellate court held that there is no pleading that the plaintiff is a settled raiyat within the

meaning of Section 23 of the Orissa Tenancy Act. In the absence of strict proof as contemplated under Sections 24 and 25 of the Orissa Tenancy

Act, the plaintiff cannot be declared as an occupancy raiyat. Held so, it allowed the appeal. It is apt to state here that during pendency of the second

appeal, the sole appellant died, whereafter his legal representatives have been brought on record.

5. The Second Appeal was admitted on the following substantial question of law.

â??Whether the appellant is a occupancy raiyat on the facts of this case.â??Â Â

6. Heard Mr.Bhuban Mohan Bhuyan, learned Advocate for the appellant and Mr.Swaymbhu Mishra, learned Additional Standing Counsel for the respondents.

7. Mr.Bhuyan, learned Advocate for the appellant submitted that the suit was lying fallow. The father of the appellant reclaimed the same. He was in

possession of the said land. Thereafter the appellant is in possession of the land for more than 40 years. He used to grow crops over the same.

Initiation of encroachment proceeding against the appellant is bad in law. The plaintiff has acquired occupancy right over the land in question. The

learned appellate court without considering the matter in its proper perspective set aside the judgment of the learned trial court.

8. Per contra, Mr.Mishra, learned Additional Standing Counsel for the respondents submitted that the plaintiff is not a settled raiyat of the village.

Since he was an encroacher, a proceeding under the O.P.L.E Act was initiated against him. Order of eviction was passed, which was confirmed in

appeal. The learned appellate court has rightly negated the plea of the plaintiff that he is an occupancy raiyat.

9. Before advertng to the contentions raised by the counsel for both the parties, it will be necessary to set out some provisions of the Orissa Tenancy

Act. Sub.sec (2) of Section 5 of the Orissa Tenancy Act defines raiyat. â?? Raiyatâ? means primarily a person who has acquired a right to hold land

for the purpose of cultivating it by himself, or by members of his family or by hired servants, or with the aid of partners, and includes also the

successors-in-interest or persons who have acquired such a right. Section 23 defines the expression â??Settled Raiyatâ?. Section 24(1) provides that

every person who being a settled raiyat of a village within the meaning of Section 23 held land as a raiyat in that village at any time between the tenth

day of September, 1891 and the commencement of this Act, shall be deemed to have acquired a right of occupancy in that land under the law then in

force; but nothing in the sub-section shall effect any decree or order passed by a Court before the commencement of this Act.

10. In the Collector of Puri Vrs. Budhinath Samantray and another, 35 (1969) CLT 552, this Court held that right of occupancy is a creature of

statute. A person entitled to get the declaration prayed for only if he proves that he has acquired the same in accordance with the statutory provisions

i.e., Section 24 of the Orissa Tenancy Act. To acquire a right of occupancy, it is incumbent to establish that he is a settled raiyat as defined under

Section 23. The relationship between the landlord and tenant in respect of agricultural tenancy can be treated by acceptance of rent. There is no

pleading that the plaintiff was a settled raiyat of the village within the meaning of Sec.23 of the Orissa Tenancy Act. By no stretch of imagination it

can be held that he acquired a right of occupancy in the land. The learned appellate court on an anatomy of pleadings and evidence on record held that

the plaintiff is not a settled raiyat of the village and negated the plea of the plaintiff. There is no perversity in the findings of the same. The

substantial question of law is answered in negative.

11. In the wake of aforesaid, the appeal, sans merit, deserves dismissal. Accordingly, the same is dismissed. No costs. Â