

(1977) 09 OHC CK 0015
In the Orissa High Court
Case No : Second Appeal No. 212 of 1974

Manhu Mallik and Another		APPELLANT
	Vs	
Smt. Gedi Dei and Others		RESPONDENT

Date of Decision : 06-09-1977

Acts Referred:

Orissa Land Reforms Act, 1960 — Section 15, 15(7), 67

Citation : AIR 1977 Ori 216 : (1977) 44 CLT 561

Hon'ble Judges : S. Acharya, J

Bench : Single Bench

Advocate : S.K. Jena, S.C. Patri, J.M. Panigrahi and J. Das, for the Appellant;
R.C. Mohanty, J.P. Das, R.K. Misra and S.D. Das, for the Respondent

Final Decision : Allowed

Judgement

S. Acharya, J.—Defendants 1 and 2 have preferred this appeal against the judgment of the first appellate court reversing the decision of the trial Court in favour of the appellants in the suit instituted against the appellants and some others.

2. The plaintiffs' suit is for Declaration of their permanent Sikimi tenancy right under defendants 1 and 2 in respect of the suit land and for confirmation of possession thereof with a declaration that defendants 1 and 2 have the right only to realise rent from the plaintiffs and have no right to khas possession of the suit lands. The plaintiffs further pray to inject the defendants permanently from creating any disturbance in the possession of the suit lands by the plaintiffs.

3. The plaintiff's case shortly stated is that Indramani Behera and the predecessors-in-interest of defendants 3 to 8 were recorded in the C. S. record of rights as Sthitiban tenants in respect of the suit lands. Under Indramani Behera and the said defendants, Agani Bewa was in possession of plot No. 2375 as a Sikimi tenant. After her death, Indramani and the other co-owners of the suit lands took over possession of the said plot of land. Indramani, who held the

power of attorney on behalf of the other co-owners of the suit land on 11-10-42 leased out the same on annual rent on permanent basis by an unregistered lease deed in favour of plaintiff No. 1 and the predecessor-in-interest of the other plaintiffs. Since that time the plaintiffs are cultivating the suit lands and are possessing the tank therein on their said right and are regularly paying rent to the landlords. Mainly on the above basis the plaintiffs assert that they have acquired permanent right of sikimi tenancy on the suit lands. They further state that defendants 1 and 2, having purchased the occupancy right in the suit lands from Indramani Behera and the other co-owners of the suit lands, are entitled only to receive the annual rent from the plaintiffs and are not entitled to khas possession of the suit lands. As the defendants started creating difficulties for the plaintiffs' peaceful possession of the suit lands they started proceeding under the provisions of Orissa Land Reforms Act (hereinafter referred to as the O. L. R. Act) but the revenue officer directed them to take shelter in the civil court. Hence the suit.

4. Defendants 1 and 2 filed a joint written statement and defendants 3, 5 and 8 jointly filed another written statement. The averments in both the written statements are almost identical. Apart from other things, they have denied execution of any lease deed by the owner of the suit lands in favour of the plaintiffs and/or their predecessors-in-interest. It is also asserted that Indramani did not hold any power-of-attorney on behalf of the co-owners of the suit property and that he could not have executed any valid lease deed in favour of the plaintiffs in respect of the suit lands. It is also averred that defendants 1 and 2 are the heirs of Agani Bewa who was the sikimi tenant in respect of the suit lands and, after her death defendants 1 and 2, while being in possession of the suit land, purchased the occupancy right from the co-owners of the said lands by a registered sale deed on payment of proper consideration, and they are in possession of the same as occupancy tenants thereof and the plaintiffs have no right, title and interest in the suit lands.

5. The trial Court dismissed the suit on merits. The appellate court has, on merits, allowed the plaintiff's appeal by declaring them as sikimi tenants of the suit lands. It has also granted the injunction as prayed for by the plaintiffs.

6. As this appeal is going to be disposed of on the preliminary issue of maintainability of the suit, raised by the learned counsel for the appellants, I do not deem it necessary to state the findings and conclusion of both the courts below.

7. Mr. Jena, the learned counsel for the appellants, contends that as per Section 67 of the O. L. R. Act the civil court has no jurisdiction to entertain and decide this suit as the questions sought to be decided in this suit are matters which the competent revenue authorities are empowered under the p. L. R. Act to decide. Mr. Jena submits that the suit primarily seeks to decide the disputed question as to whether there was existence of the relationship of landlord and tenant between the defendants and the plaintiffs in respect of the suit lands, and that

being so that dispute is cognizable and triable by the Revenue Officer empowered under the O. L. R. Act as provided u/s 15 of that Act and the civil court can have no jurisdiction to entertain that suit as mentioned u/s 67 of that Act. The relevant portions of Section 15 of the O. L.R. Act are stated below:--

"15. Recovery of rent and dispute between landlord and Raiyat or tenant-

(i) Any claim for recovery of arrears of rent by a landlord and his raiyat or tenant as the case may be as regards

(a) xx xx xx (b) tenant's possession of the land and his rights to the benefits under this Act; or

(c) xx xx xx (d) the existence of the relationship of landlord and tenants;

shall be decided by the Revenue officer on an application to be filed by any party interested;

Provided xx xx xx (2) xx xx xx Provided xx xx xx (3) xx xx xx (4) xx xx xx (5) If after holding enquiry under Sub-section (2) the Revenue Officer is satisfied that the tenant was cultivating the land at the date of commencement of this Act or at any time thereafter, and that he is being unlawfully prevented from cultivating such land by his landlord he may in addition to the penalty that he may impose on the landlord u/s 18, order the landlord by a notice served in the prescribed manner to allow the tenant to enter the land forthwith and to cultivate it as a tenant.

(6) If the Revenue Officer is satisfied after such further enquiry as he may deem necessary that the landlord has failed to comply with his order under Sub-section (5) he shall take such steps as may be necessary to put the tenant in possession of the land.

(7) Pending final disposal of the dispute under this section the Revenue Officer may pass such interim orders relating to the appointment of receivers, for taking charge of the crops, or getting the lands cultivated or for such other purposes as he may deem necessary or expedient." Section 67 of the O. L. R. Act as it stood before its amendment was as follows:--

"67. Bar of jurisdiction of civil courts:--

Save as otherwise expressly provided in this Act, no civil court shall have jurisdiction to entertain any matter which any officer or other competent authority is empowered by or under this Act to decide".

The word "entertain" in the section has been substituted by the words "try and decide" by Act 44 of 1976.

8. From the pleadings of the parties, even only from the plaint itself, it is evident, that, this suit is for the decision of a dispute between the parties as to whether there is existence of the relationship of landlord and tenant between them and if the plaintiffs are held to be tenants under the defendants what are their rights

under the Act. The plaintiffs claim for a declaration that they are sikimi tenants under the defendants and that defendants 1 and 2 having purchased only the occupancy right in the suit lands they have only the right to realise rent from the plaintiffs and are not entitled to khas possession of the suit lands. The defendants assert that defendants 3 to 8 were the occupancy tenants in respect of the suit lands and while they were in possession of the same the defendants 1 and 2 purchased the same from them by a registered sale deed on payment of good consideration and they are in possession of the same. They also assert that the plaintiffs were not the sikimi tenants in respect of the suit lands under any of the defendants, nor were they in possession of any portion of the same under any of the defendants on any right whatsoever. Accordingly, the main issues which are required to be decided in this suit are disputes which come clearly within Section 15 (b) and (d) of the O. L. R. Act. Accordingly, the said disputes are disputes to be decided by the Revenue Officer as provided u/s 15 of the O. L. R. Act. As the main disputes in this suit are to be decided by the competent Revenue Officer no civil court shall have jurisdiction to entertain and/or try this suit as is evident from Section 67 of the O. L. R. Act. The decisions reported in Sankar Kumar Bhattar and Others Vs. Tehsildar-cum-Revenue Officer and Others, ; Gopinath Jew Vs. Rahas Mohanty, and ; (Gopinath Jew v. Rahas Mohanty) support the above view.

9. Moreover, from the provisions of Sub-sections (5), (6) and (7) of Section 15 of the O. L. R. Act it is also clear that the Revenue Officer who has the jurisdiction to decide the aforesaid questions involved in the suit is vested with the power to grant the relief of injunction in respect of matters within his cognizance. That being so, the civil court cannot also have the jurisdiction to grant the injunction prayed for by the plaintiffs as that would be clearly barred u/s 67 of the Act. In this connection the decision reported in 37 (1971) CLT 687 (Sm. Gouri Dei v. Agadhu Sahu) may be seen.

On the above analysis I find that the suit regarding the disputes as stated above is not maintainable in the civil court, and Mr. Jena's contention in this respect is perfectly correct and justified. True it is that the objection regarding the maintainability of the suit in the civil court was not taken in the courts below. But, as it is found that the suit is not maintainable in the civil court this has to be dismissed on that score, and consequently the findings and conclusions of both the courts below have to be and are hereby set aside. Accordingly, the appeal preferred by the defendants is allowed on the above-mentioned contention of Mr. Jena.

Ext. 7 shows that the plaintiffs, before filing the suit had approached the Revenue Officer for being declared as royats in respect of the suit lands, and the Revenue Officer without deciding the matter advised both the parties who appeared before him in connection with that matter, to take shelter in the civil Court. Mr. Mohanty, the learned counsel for the plaintiffs, states that the plaintiffs acting on the said advice filed this suit. Believing that to be a correct advice the

defendants also possibly did not raise the question of maintainability of the suit in the courts below. In the circumstances, therefore, both the parties will bear their own costs throughout.