

(1964) 04 OHC CK 0016
In the Orissa High Court
Case No : O.J.C. No. 240 of 1963

Mohammed Abu Ahmed

APPELLANT

Vs

Collector of Cuttack and Others

RESPONDENT

Date of Decision : 30-04-1964

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Orissa Tenants Relief (Amendment) Act, 1962 — Section 11A, 29
Orissa Tenants Relief Act, 1955 — Section 10(1), 11A, 11A(1), 11A(4), 15
Penal Code, 1860 (IPC) — Section 323, 379

Citation : (1965) 31 CLT 917

Hon'ble Judges : Narasimham, C.J.; Misra, J

Bench : Division Bench

Advocate : B. Mahapatra and R.K. Mohapatra, for the Appellant; A.G. and R.C. Ram, for the Respondent

Final Decision : Dismissed

Judgement

Narasimham, C.J.—This is an application under Articles 226 and 227 of the Constitution of India, by a landlord against the order of the District Collector of Cuttack in Orissa Tenants Relief Revision Case No. 21 of 1962-63 reversing the decisions of the two lower Courts and allowing the application of opposite party No. 2 (who was the tenant), u/s 9 of the Orissa Tenants Relief Act; 1955, for restoration of possession of the suit lands.

2. It is admitted that opposite party No. 2 was actually cultivating the lands as bhagchassi under the Petitioner on an annual lease basis, the last lease being for the agricultural year 1954-55. The landlord however stated that the bhagchassi is voluntarily gave up possession on 31-3-1955 and he (the landlord) then entered into possession of the disputed plots (nos. 1776 and 1784 of Khata No. 524 of village Baharpada). He also took the further precaution of applying to the Collector u/s 4(1) of the Orissa Tenants Relief Act informing him of his having already taken possession of the plots for the purpose of personal cultivation on 1-4-1955. Opposite party No. 2 (tenant) however contended that he was all

along in possession as a bhagchassi and that as his right was interfered with, he sought the help of the Orissa Tenants Relief Court. It is further admitted that there was a criminal case between the parties under Sections 379 and 323, Indian Penal Code. That was in respect of the crops grown on a portion of the disputed plots during the year 1955. The tenant cut away the crops and though he was prosecuted under those sections he was eventually acquitted by the Magistrate who held that there was conflict of evidence on the question of possession and that the landlord failed to prove beyond reasonable doubt that he had grown the crops.

3. Before the Orissa Tenants Relief Court the landlord led evidence to show that he had actually obtained possession on 1-4-1955 and had also issued necessary notice u/s 4 of the Orissa Tenants Relief Act. Some Court witnesses while examined by the Orissa Tenants Relief Officer who visited the spot. The judgment shows that the evidence of the Court witnesses was somewhat conflicting. They appear to have stated that both parties carried out agricultural operations during 1955. But the Orissa Tenants Relief Officer was inclined to believe the version given by the landlord especially because resumption proceedings u/s 4 of the Act had been held. Hence he dismissed the tenants petition. On appeal the learned Additional District Magistrate confirmed the order of the Orissa Tenants Relief Officer without a careful discussion of the evidence as regards actual possession during the year 1955. On revision the learned District Collector held that though the proceeding u/s 4 of the Orissa Tenants Relief Act might have been valid, nevertheless the landlord's claim to have actually obtained possession on 1-4-1955 was not believable, especially in view of the acquittal of the tenant in the criminal case which related to the crops grown in 1955. According to the District Collector the success of the landlord in the proceeding u/s 4 of the Act merely gave him a right to evict the tenant under Sub-section (3) of Section 4; but as that right was not actually exercised within the statutory period, the tenant's right to continue in possession remained unaffected. Therefore, he reversed the decision of the two lower Courts and allowed the appeal of the tenant.

4. Mr. Mohapatra raised an interesting question as regards the jurisdiction of the District Collector to entertain this revision petition. On the date on which the Orissa Tenants Relief Act proceedings were commenced, there was a right of appeal to the Additional District Collector against the order of the Orissa Tenants Relief-Office and a further right of revision before the District Collector u/s 15 of the Orissa Tenants Relief Act. But a few days prior to the delivery of the order of the Orissa Tenants Relief Officer, the Legislature enacted the Orissa Tenants Relief (Amendment) Act, 1962 (Orissa Act 29 of 1962) which was brought into force from 10-11-1962. By virtue of the amendment a new section (Section 11-A) was inserted in the present Act, by which the Collector was given exclusive jurisdiction to "decide all disputes regarding existence of relationship of landlord and tenant arising in the Course of any proceedings" (see Sub-section (1) of Section 11-A). Sub-section (4) of that section conferred a right of appeal to the

Collector of the district, against an order passed by any subordinate Revenue Officer exercising the powers of a Collector and there was a right of second appeal before the Revenue Divisional Commissioner with a further right of revision before the High Court on a point of law. The new Section 11-A introduced by Orissa Act, 29 of 1962 came into force only a few days prior to the date of delivery of the order of the Orissa Tenants Relief Officer and it may be urged that if the controversy between the parties can be held to come within the scope of Sub-section (1) of Section 11-A, the District Collector cannot exercise the powers of revision nor could the Additional District Magistrate have exercised the powers of an appellate Court and Mr. Mohapatra's contention might have some force. But the question arises as to whether the controversy in this litigation can be said to relate to any dispute concerning the existence of relationship of landlord and tenant.

5. Admittedly, the tenant (opposite party No. 2) was in possession of the disputed lands on 1-7-1954. Hence, he will be entitled to protection under the provisions of the Orissa Tenants Relief Act and cannot be evicted except in accordance with those provisions. It is true that by virtue of Section 4(1), the landlord is given the right to select certain lands for personal cultivation and give due intimation of the same, to the Collector. If the landlord succeeds in showing that the provisions of Section 4(1) have been followed, he will undoubtedly get a right to evict the tenant by virtue of Sub-section (3) Section 4 unless, as stated by him, the tenant had peacefully given up possession on 31-3-1955.

6. Here, in the proceeding u/s 9 of the Orissa Tenants Relief Act, the existence of the relationship of landlord and tenant on 1-7-1954 was conceded and the real controversy was as to whether the landlord has established his right to resume the lands for personal cultivation in pursuance of Section 4. This dispute has been expressly provided for in Clause (d) of Sub-section (1) of Section 9. It is true that if the landlord establishes the right the result would be that the tenancy would be extinguished either by actual eviction of the tenant in exercise of the power under Sub-section (3) of Section 4, or by the tenant himself peacefully surrendering possession (as alleged in this case). There can be, no controversy about opposite party No. 2 ceasing to be a tenant once it is held that the landlord has complied with the provisions of Section 4 and obtained a right to resume the lands.

7. Mr. Mohapatra however urged that the dispute about the existence of the relationship of landlord and tenant was inextricably mixed up with the dispute about the right of the landlord to resume the lands for personal cultivation, in pursuance of Section 4 and that consequently the dispute in the present case must be held to be within the scope Sub-section (1) of Section 11-A (as inserted by Section 29 of 1962). I am unable to accept this contention. Once the landlord admits that the tenant was in possession of the disputed property on the relevant date, viz. 1-7-1954, the tenant gets the protection provided in the Orissa Tenants Relief Act and thereafter there can be no question of any dispute

regarding the existence of the relationship of landlord and tenant so far as the rights of a tenant under that Act are concerned. The real dispute in this case is with regard to the right of the landlord to resume the disputed lands for the purpose of personal cultivation and it is on the basis of that right that the landlord has attempted to defeat the claim of the tenant in the proceeding u/s 9 of the Orissa Tenants Relief Act before the Orissa Tenant Relief Collector. But Clause (g) of Sub-section (1) of Section 9 says that dispute shall be decided only by the Collector and not by the Civil Court. Even prior to the insertion of Section 11-A in the parent Act by the amending Act of 1962, there was no doubt about the exclusive jurisdiction of the Collector to decide a dispute which came within the scope of Clause (d) of Sub-section (1) of Section 9; and the jurisdiction of the Civil Court to decide that dispute was taken away by the provisions of Section 10(1) of the Act in view of the judgment of the Supreme Court in *Magati Sasmal v. Pandav Bissoi* 28 (1962) C.L.T. 85 (S.C.), the Legislature found it necessary to intervene in order to post the jurisdiction of the Civil Court to determine disputes about the existence of relationship of landlord and tenant, and hence the amending Act 29 of 1962 was passed. But that Act cannot be construed as conferring a fresh jurisdiction on the Revenue Court or on to Orissa Tenants Relief Act Officer to decide those disputes which under the pre-existing provisions of the Tenants Relief Act (before amendment) were exclusively cognizable by the Revenue Court. Hence the special forum for appeal and second appeal provided in Sub-section (4) of Section 11-A, inserted by the amending Act of 1962 will not be available for the decision of dispute, which, prior to the amendment, were exclusively cognizable by the Revenue Courts. The forum for the decision of those disputes will continue to be the same as it was prior to the coming into force of the amending Act namely, the Additional District Collector (Court of appeal) and District Collector (Court of revision).

8. Mr. Mohapatra then contended that there was an error of law apparent on the face of the record in the order of the District Collector passed in revision, and that the Court could, therefore, interfere under Article 226. According to him, the Court revision omitted to discuss the evidence of all the witnesses or the question of possession by the landlord on 1-4-1955 and has relied solely on the judgment of the Magistrate, in the criminal case for the purpose of holding that the landlord did not dispossess the tenant on 1-4-1955 as claimed by him. It is true that the Court of revision is also a final Court of fact and has a right to fully discuss the evidence on the question of possession but his discussion of the same is not quite satisfactory. It is also true that he has attached too much importance to the finding of the criminal Court on the question of possession, but it cannot be said that the decision of the criminal Court has no value whatsoever. It has undoubtedly some prima facie value on the question of possession. Moreover, the proceedings under the Tenants Relief Act are intended be summary proceedings and we can not hold that the provisions of the Evidence Act apply strictly to those proceedings. We find that neither the Orissa Tenants. Relief Court nor the appellate Court has clearly come to a finding on the facts, that the

landlord actually obtained possession of the plots on 1-4-1955. On the other hand, the summary of the evidence of the Court witnesses as given by the Orissa Tenants Relief Court, shows that they stated that both the landlord and the tenant were exercising acts of possession and performing agricultural operations on the disputed land in 1955. They have mixed up the fact of actual possession of the land on 1-4-1955, with the legal inference to be drawn from their view that resumption proceedings u/s 4(1) of the Orissa Tenants Relief Act have been properly completed. The initial burden of showing that the tenant was actually dispossessed on 1-4-1955 is on the landlord and when there is no clear finding on this point by the two lower Courts of fact, we cannot say that there is any error of law apparent on the face of the record if the final Court of fact, namely the Court of revision, disagrees with their views and holds that the landlord has failed to prove that he was in actual possession on 1-4-1955; and this finding is clearly fatal to the landlord's case because it was not stated by him that he took steps to evict the tenants under Sub-section (3) of section of the Orissa Tenants Relief Act after completing the resumption proceedings.

9. For these reasons, though we are not satisfied with the discussion of the evidence by the Courts of fact, we do not consider this to be a fit case where we should exercise our extra ordinary jurisdiction under Articles 226 and 227. The application is dismissed with costs. Hearing fee is assessed at Rs. 501/- (Rupees fifty only).

Misra, J.

10. I agree.