

(1980) 07 OHC CK 0002

In the Orissa High Court

Case No : Second Appeal No. 83 of 1977

Musa Jena and Others

APPELLANT

Vs

Panu Charan Naik and Others

RESPONDENT

Date of Decision : 02-07-1980

Acts Referred:

Evidence Act, 1872 — Section 35

Orissa Consolidation of Holdings and Prevention of Fragmentation of Land Act, 1972 —
Section 2, 6(2)

Citation : AIR 1980 Ori 183 : (1980) 50 CLT 178

Hon'ble Judges : S. Acharya, J

Bench : Single Bench

Advocate : B.R. Rao, B.L.N. Swamy and G.C. Patnaik, for the Appellant; R.C. Patnaik and P.K. Misra, for the Respondent

Final Decision : Dismissed

Judgement

S. Acharya, J.—Defendants 1, 2 and 3 are the appellants in this appeal against the confirming decision of the court below.

2. This second appeal was summarily dismissed on 23-8-77 in the admission stage by Hon"ble P. K. Mohanti, J. Thereafter a review petition was filed by the appellants which was registered as Civil Review No. 30/77. In this review matter it was contended by the appellants that subsequent to the dismissal of the second appeal they learnt that a notification u/s 3 (1) of the Orissa Consolidation of Holdings and Prevention of Fragmentation of Land Act, 1972 (hereinafter referred to as the "Act") had been published in the Orissa Gazette on 28-5-76 covering the area containing the suit property and so by virtue of the provisions of Section 4 (4) of the Act the plaintiffs" (respondents in this appeal) suit abated. On hearing both the parties Hon"ble P. K. Mohanti, J. allowed the review petition and recalled the order dated 23-8-77 and admitted the second appeal for hearing on the question as to whether the suit shall abate u/s 4 on the publication of the notification u/s 3 of the Act. In accordance with the above order the second

appeal has been listed for hearing,

3. On hearing the counsel appearing for both the parties on the above question and on going through the lower court records I find that in paragraph 1 of the plaint it is mentioned that on the suit property previously there was a "Pana Baraja" but since a few years prior to the institution of the suit the defendants constructed a Chalia (hut) on the suit property and on the vacant portion thereof they were growing brinjals and plantains. The defendants (appellants in this appeal) in paragraph 8 of their writ- ten statement have stated that the suit property was a barren land lying fallow and was not fit for agricultural purpose. It is further stated that the Pana Baraja on the suit land was damaged by a cyclone in the year 1971 and thereafter the defendants possessed the suit land by constructing a house and having a kitchen garden thereon. Again, in the summer of 1972 the house and the kitchen garden were destroyed by another cyclone, and the defendants reconstructed the said house and raised a kitchen garden thereon, and are possessing the suit property as such openly and to the knowledge of defendant No. 4 and the plaintiffs. D.Ws. 1. 2 and 3 and D.W. 5 (D. 1) state that the defendants have constructed a house on the suit land and are also growing vegetables on the vacant portion of the same. In the draft Parchas (Exts. B and B/1) filed by the defendants in this case the suit property has been described as a Bagayat Purnachandra Oriya Bhasakosh shows that the word "Bagayat" means "orchad" or "garden". According to the Chambers's English Dictionary, "orchard" means "an enclosed garden of fruit trees". From the plaint, written statement and evidence on record, as stated above, there is no doubt that the suit property is being used since a long time as a homestead property with a kitchen garden on it, and it is not the case of either party nor is there anything on record to show that the suit property is an agricultural land.

4. From the long title of the Act and the "Statement of Objects and Reasons" it is quite evident that the statute seeks to deal with only the agricultural lands as defined in Section 2 (b) of the Act. From the definition of "agricultural land" read with the Explanation attached to Section 2 (f) it is quite evident that the lands which are really agricultural lands could only be subjected to consolidation. Reference to "houses" in Section 6 (2) (c) (ii) would obviously mean houses which are located on agricultural lands and used as farm houses. There is nothing on record to show that the house on the suit property is a farm house on or even in respect of any agricultural land.

5. Apart from the above, it is now seen from the extract of the Land Register prepared u/s 6 (2) of the Act that apart from describing the suit property as a Bagayat it is specifically mentioned in the Remarks column against the suit, plot that this property is unfit for consolidation. This Land Register has been filed by the respondents in this court as additional evidence in this case, and this is admitted as evidence u/s 35 of the Evidence Act. This record, having been prepared by the Assistant Consolidation Officer and not by the Director of Consolidation, cannot be utilised for clause (iii) of the Explanation to Section 2

(f) of the Act, but the above entries in the said record can be considered as relevant evidence along with other materials on record for the purpose of deciding the question in issue.

6. On the above materials on record I am of the view that the suit property does not come within the purview of the Act and on the publication of the notification u/s 3 of the Act the suit did not abate. The above point is accordingly decided against the appellants. No other substantial question of law is urged requiring interference with the impugned judgment in this appeal. That was also the view of Hon"ble P.K. Mohanti, J, when he took up this case for admission at the first instance.

The second appeal is accordingly dismissed with costs.