

(1954) 09 OHC CK 0003

In the Orissa High Court

Case No : O.J.C. No's. 3, 4, 18, 19, 23, 25, 26, 27, 28, 33, 54, 55, 61, 62, 63, 68, 69 and 100 of 1953

P. Ramamruti and Others

APPELLANT

Vs

Dhuba and Others Etc. Etc.

RESPONDENT

Date of Decision : 29-09-1954

Acts Referred:

Agency Tracts Interest and Land Transfer Act, 1917 — Section 3, 4, 4(1), 4(2), 4(3)
Civil Procedure Code, 1908 (CPC) — Section 2(2), 26
Constitution of India, 1950 — Article 19, 226, 227, 31
Criminal Procedure Code, 1898 (CrPC) — Section 7(2)
Ganjam and Vizagapatam Act, 1839 — Section 3
Koraput and Ganjam Agency Repealing and Extension of Laws Regulations, 1951 — Section 2
Scheduled Districts Act, 1874 — Section 3, 4, 6

Citation : (1954) 20 CLT 706

Hon'ble Judges : Panigrahi, C.J.; Rao, J

Bench : Division Bench

Advocate : H. Mohapatra and R.N. Misra, for the Appellant; S.K. Bay in O.J.Cs. 54 and 55 of 1953 and A.G., for the Respondent

Judgement

Panigrahi, C.J.—These consolidated applications under Articles 226 and 227 of the Constitution raise the question of the validity of certain proceedings initiated under the Agency Tracts Interest and Land Transfer Act, 1917 (Madras Act I of 1917), now pending before the Special Assistant Agent, Rayaghada, in Koraput district. The Petitioners are all non-hillmen and opposite party No. 1 in each of these proceedings is a hillmen who has transferred his lands in favour of the Petitioners or their predecessors-in-interest. Opposite Party No. 2 is the Special Assistant Agent, Rayaghada, in all these cases.

2. The substantial question that has to be decided is whether the introduction of the Bengal, Arga and Assam Civil Courts Act of 1887 (XII of 1887) in Koraput district has deprived the Special Assistant Agent of his jurisdiction to entertain the petitions filed by opposite Party No. 1.

3. A few preliminary facts have to be stated in order that the points raised by the Petitioners may be appreciated. The lands which form the subject-matter of the dispute between the hillmen and their transferees who are non-hillmen, lie within the district of Koraput which is a Scheduled area and was governed by the provisions of the Scheduled Districts Act (Act XIV of 1874). The administration of justice and the collection of revenue in the hill tracts of Ganjam and Vizagapatam districts were regulated by the Ganjam and Vizagapatam Act (Act XXIV of 1839) and were vested in the Collectors of those districts who functioned as Agents for the Governor of Madras. Section 3 of this Act provided that the administration of Civil and Criminal justice and the collection and superintendence of revenue of every description, within the tracts of country specified in Section shall be vested in the Collector of Ganjam in respect of the tracts of country which were then included in the district of Ganjam, and in the Collector of Vizagapatam in respect of the hill zamindari of Jeypore which now constitutes the Koraput District of the State of Orissa. Section 4 of that Act empowered the Governor-General-in-Council of Fort St. George, to prescribe rules for the guidance of such Agents and their subordinate Officers, and to determine to what extent; the decisions of Agents in Civil Courts shall be final, and in what suits an appeal shall lie to the Sadar Adalat. In exercise of the power thus conferred, the Governor-General-in-Council framed certain rules directing how civil disputes had to be decided and prescribing the forum before which appeals were to be heard. In 1874, the Scheduled Districts Act was passed by the Central Legislators declaring the law applicable to such areas. Section 3 of that Act empowered the Local Government to declare, by notification, that certain Acts shall not; operate in those areas.

Section 6 of the Scheduled Districts Act is as follows:

6. The Local Government may, from time to time--

(a) appoint officers to administer civil and criminal justice and to superintend the settlement and collection of the public revenue, and all matters relating to rent, and otherwise to conduct the administration within the Scheduled Districts,

(b) regulate the procedure of the officers so appointed; but not so as to restrict the operation of any enactment for the time being in force in any of the said districts,

(c) direct by what authority any jurisdiction, powers or duties incident to the operation of any enactment for the time being in force in such districts, shall be exercised or performed.

The Zamindari of Jeypore was one of the Scheduled districts mentioned in Part I of the First Schedule to the Act. On the 23rd July 1924, the Government of Madras framed a set of rules, u/s 6 of the Scheduled Districts Act, entitled "The Agency Revised Rules" which were published in G.O. No. 1116-Rev. of that date. These rules formed a complete Code of civil practice and procedure which governed the proceedings taken in the Agency Courts. Rule 1 defines the powers of the Agent and Sub-rule (1) of that rule says that: "the Agent to the Governor

is vested with the same powers as are vested in the district and revenue courts in the non-Scheduled districts of the Madras Presidency, and the Agency Divisional Officer with the same powers as are vested in the subordinate and revenue courts, subject to the modifications contained in these rules". It is therefore clear that the Agent functioned as the District Judge and the Divisional Officer as the Subordinate Judge in the Agency areas. There is provision made for the appointment of District Munsifs also; but it is unnecessary to discuss the powers of the officers subordinate to the Agency Divisional Officer. Rule 3 says that the courts shall have jurisdiction to try all suits of a civil nature excepting suits, of which their cognizance is expressly or impliedly barred. The rules provide for different gradations of courts and the procedure to be adopted by the officers functioning as courts. There are provisions for appeals against decrees & execution of decrees passed by the different courts. The word "decree" has been defined as follows: "A decree shall include order passed under Rules 39(1) and 43(3), but not orders under Rules 33 and 35". These rules were in force in the area when the Jeypore Zamindari was transferred to Orissa and the District of Koraput was constituted in 1936. By Orissa Regulation No. VII of 1941, a Subordinate Judge was posted to the Agency area and was designated as the Agency Subordinate Judge. Rule 6 says that with the exception firstly of suits which were cognizable by Agency munsifs, and secondly of those cognizable by the Agent to the Governor, all suits shall be instituted either in the Court of the Agency Subordinate Judge or in the Court of the Agency Divisional Officer having jurisdiction. The decisions of the Subordinate Judge are subject to appeal in the same manner and to the same extent as if they were passed by the Agent to the Governor. Though the powers of the Agency Divisional Officer as a Court were retained, in practice all civil suits which should have been instituted in the Court of the Agent or the Agency Divisional Officer were either instituted in the court of the Agency Subordinate Judge, or transferred to his file, after the amended rules came into force.

A further step was taken by the passing of Orissa Regulation V of 1951 entitled "The Koraput and Ganjam Agency Repealing and Extension of Laws Regulation of 1951". This Regulation was published in the Orissa Gazette dated the 28th November 1951, and was brought into force in Koraput District on the 1st of January 1953 by Notification No. 10222-J. dated 17th December 1952. By another Notification-No. 10225-J. of the same date, a District and Sessions Division styled as Koraput Judgeship and Sessions Division was constituted by the State Government. That notification reads as follows--

The 17th December, 1952.

No. 10225-J.-In exercise of the powers conferred by Sub-section (1) of Section 13 of the Bengal, Assam and Agra Civil Courts Act, 1887 (XII of 1887) and Sub-section (2) of Section 7 of the Code of Criminal Procedure, 1898 (V of 1898) and in supersession of the Notification of Orissa Government in the Law and Commerce Department, No. 8 dated the 1st April 1936, the Governor of Orissa is

pleased to direct that the district of Koraput shall be constituted, with effect from 1st January 1958, into a District Judgeship and Sessions Division (to be styled as the Koraput Judgeship and Sessions Division) with headquarters at Jeypore.

By Order of the Governor, B.C. Das Secretary to Government.

By Section 2 of Orissa Regulation No. V of 1951 the Orissa Agency Rules and the Ganjam and Vizagapatam Act of 1839 were repealed, and the CPC of 1908 and the Bengal, Assam and Agra Civil Courts Act, 1887, were introduced in the district of Koraput.

4. The position thus is that from the 1st January 1953, the Agency Divisional Officer and the Agents ceased to function as the Civil Courts and these powers and functions have devolved on the District Judge and the Subordinate Judicial Officers appointed under the Bengal, Agra and Assam Civil Courts Act, 1887. The effect of the repealing Regulation was to abolish the Agency Courts and to substitute in their place the Civil Courts constituted under the Bengal, Assam and Agra Civil Courts Act.

5. But it was contended by the learned Advocate. General that the proceedings under the Agency Tracts Interest and Land Transfer Act, 1917 (hereinafter referred to as the Act), are not judicata proceedings triable in a Civil Court and that the jurisdiction of the Agency Divisional Officer to try them consequently remains unaffected by Orissa Regulation V of 1951. It is, therefore, necessary to examine the provisions of the Act and see whether the orders contemplated by it are mere executive fiats or are suits triable only by Civil Courts.

6. The preamble to the Act shows that it was passed to "regulate the rate of interest and the transfer of land in the Agency tracts."

Section 3 of the Act lays down that:

In any suit instituted after the commencement of this Act, notwithstanding any agreement to the contrary

(a) interest on any debt or liability shall not, as against a member of a hill-tribe, be allowed or decreed at a higher rate than 24 per cent per annum....

(b) the total interest allowed or decreed on any or liability as against a member of a hill tribe, shall not exceed the principal amount.

Section 4 is as follows:

4.(1) Notwithstanding any rule of law or enactment to the contrary, any transfer of immovable property situated within the Agency tracts by a member of a hill tribe shall be absolutely null and void unless made in favour of another member of a hill tribe, or with the previous consent in writing of the Agent or of any other prescribed officer.

(2) Where a transfer of property is made in contravention of Sub-section (1), the Agent or any other prescribed officer may, on application by anyone interested

decree ejectment against any person in possession of the property claiming under the transfer, and may restore in to the transferor or his heirs.

(3) Subject to such conditions as may be prescribed an appeal against a decree or order under Sub-section (2) if made by the Agent, shall lie to the Governor-in-Council and if made by any other officers shall lie to the Assistant Agent or to the Agent as may be prescribed.

Section 5 says:

Notwithstanding the provisions of any law to the contrary every suit against a member of a hill tribe instituted after the commencement of this Act shall be instituted only in the Court of the Agency tracts.

Section 8 saves the transfers made before the coming into force of the Act from being affected by Section 4, By Orissa Act 11 of 1948, Section 3 of the parent Act of 1917 was repealed and Section 4 was amended so as to enable the Agent or any other prescribed officer to start proceedings "on his own motion". Sub-section (3) of Section 4 has provided for an appeal against an order or decree made under Sub-section (2) if made by the Agent, to the Revenue Commissioner instead of to the Provincial Government, and if made by any other officer, to the Agent or to any other officer, specially empowered by the Provincial Government. The Amendment Act also introduced a new Section providing for the imposition of a penalty on the transferee if he was found in possession after the 1st March 1948, at the rate of Rs. 100/- per acre for each year or any part thereof during which his unlawful possession continued. It further says that: "such penalty may be imposed by the Officer decreeing ejectment under Sub-section (1) of Section 4 and shall be recoverable as arrears of land revenue".

7. It will therefore be noticed that the provisions of the Act are drastic in some respects and affect the property rights of the transferees. The Act contemplates suits, decrees and orders, and appeals against decrees and orders. If the intention of the Legislature had been that the Agent or his subordinates can, by executive orders divest persons of their properties, it would not have made such elaborate provisions as are found in the Act. In fact, there would have been no necessity to undertake legislation at all for this purpose. Section 5 of the Act lays down that every "suit" against a member of a hill tribe shall be instituted only in the "Courts of the Agency tracts". Can it be said that a proceeding initiated by a member of a hill tribe is outside the jurisdiction of the Courts of the Agency tracts, and can be disposed of by executive orders, while a suit against him is within the jurisdiction of those Courts ? There is no reason to think that the Legislature contemplated different modes of procedure, according as the person at whose instance the proceedings are initiated, is a hillman or not.

8. Sub-section (2) of Section 4 of the Act says that the officer may "decree ejectment" which contemplates a judicial trial and a finding that the transferee is liable to ejectment. If the learned Advocate-General's contention were to be accepted, one would expect simpler language and it would have been enough,

for the purpose of protecting the interests of hillmen, if the Legislature had merely said that the Agent may eject any person in possession of the property of a hillman. It should also be noticed that the person against whom a decree can be passed for ejectment must be one "claiming" under the transfer. The use of the word "claiming" again leads me to think that the question of title has to be decided by the Officer. The mere fact of possession does not entitle him to remove the transferee from the land. The person in possession is entitled to put forward his claim either under the deed of transfer or otherwise, and this question has to be determined by the officer judicially before he can order ejectment.

9. The word "decree" has not been defined anywhere in the Agency rules, except to the extent of indicating what it includes. It has been held by a Division Bench of the Patna High Court in *Lingaraj Santra v. Jaikrushna Mohapatra* 13 CLT 29 that the word "decree" in the Agency Rules means the formal expression of an adjudication "in so far as the Court expressing in conclusively determines the rights of parties or any of the matters in controversy in a suit their Lordships further held that by the term "decree" the Governor-General-in-Council intended something corresponding generally to the definition of that term contained in the first sentence of Sub-section (2) of Section 2 of the Code of Civil Procedure. I am not, therefore, impressed by the argument that the proceedings under the Act are executive in character and are not cognizable by the Civil Courts.

10. The next question is whether the proceedings in these cases are in the nature of a suit which could only be tried by a Civil Court. It was contended that as the proceedings start with an application, and not with a plaint, they cannot be regarded as a suit.

Our attention was drawn, to the case, of *Dibha Balesu v. Lugudu China* ILR Mad 984 which was a decision of Walsh, J. The question that arose for consideration there was whether a second appeal would lie to the High Court against an order refusing an application u/s 4(2) of the Act. It was held that the order refusing an application is not a "decree". I do not think this case is of any help in determining the point raised before us, The definition given to the term "decree" indicates that the adjudication should relate to the rights of the parties or "any of the matters in controversy in the suit". The word "suit" has not been defined anywhere except that indications have been given in the CPC as to what it; means. Section 26 of the CPC says that

every suit shall be Instituted by the presentation of a plaint or in such other manner as may be prescribed.

It is therefore not correct to say that a suit can only start; on the presentation of a plaint. The essentials of a suit are: (1) opposing parties; (2) a subject-matter in dispute; (3) a cause of action and (4) a demand for relief. As Sir Barnes Peacock observed in *Haru Chandra Roy Chowdhury v. Soorabhane Dibia* 9 WR (F.B.) 402 "the word "suit" does not necessarily mean an action, nor do the

words "cause of action" and "Defendant" necessarily mean a cause upon which an action has been brought, in the ordinary, restricted sense of the words. Any proceeding in a Court of Justice to enforce a demand is a suit." His Lordship further observed: "A person who applies to the Court is a suit or for relief; a person who defends himself against the enforcement of the relief sought, is a Defendant; and the claim, if recoverable, is the cause of action." The learned Judge relied on a passage from Domat's Civil Law, Chapter 12, Section 17 which is worth quoting:

Since laws are general rules they cannot regulate the time to come so as to make express provision against all inconveniences, which are infinite in number, and so that their dispositions shall express all the cases, that may possibly happen. It is the duty of the law giver to foresee only the most natural and ordinary events, and to form his dispositions in such a manner as that, without entering into the details of singular cases, he may establish rules common to them all; and next, it is the duty of the Judges to apply the laws, not only to what appears to be regulated by their express dispositions, but to all the cases to which a just application of them may be made, and which appear to be comprehended either within the express sense of the law, or within the significance that may be gathered from it.

Proceedings under the Land Acquisition Act which raise a dispute as between persons claiming compensation have been held to be in the nature of a suit, involving as it does, difficult questions of title. In Ramachandra v. Ramachandra Rao 49 Ind App 129 the Judicial Committee observed:

How the proceedings were commenced is a matter that is not material provided that they were instituted in the manner that gave the Court jurisdiction, for they ended in a decree made by the High Court and appealable to this Court.

See also Secretary of State v. Chelikani Rama Rao 43 Ind App 192.

An application u/s 84(2) of the Madras Hindu Religious Endowments Act has been held to be "analogous to a regular suit filed by an unsuccessful claimant" in a Full Bench decision of the Madras High Court in Damodaran v. Board of Hindu Religious Endowments AIR 1930 Mad 392. In a later Full Bench case, Rajagopalan v. The Hindu Religious Endowment Board AIR 1931 Mad 1031 the question referred to the Full Bench was whether an order passed by the District Judge u/s 84(2) of that Act, on an application made to the District Court to set aside the decision of the Board u/s 84(1) is appealable to the High Court. The Full Bench held that such an order was not a "decree" as defined in Section 2(2) of the Code of Civil Procedure, and was consequently not appealable to the High Court. Doubtless there is an observation in the judgment of Madhavan Nair, J. that a proceeding which starts with an application is not a suit unless the proceeding is declared to be a suit by the enactment itself. This decision, if I may say so with respect, does not run counter to the view I take as the word "decree" has been specifically used in Section 4(1) of the Act which we are

considering, and a decree can be passed only in a suit. This view also gains support from the fact that the CPC permits a suit to be instituted by the presentation of a plaint "or in such other manner as may be prescribed". Section 4(2) of the Act prescribes the initiation of proceedings by an application which would result in a decree. I have gone through the petitions filed in each of these cases and find that they contain all the particulars required for a plaint, such as the names of parties, description of the lands, the date of transfer, nature of transfer, and all other relevant details that a plaint should ordinarily contain. The applications have been filed in the "Court of the Revenue Divisional Officer" and are numbered as Miscellaneous Cases under the A.T.I.L.T. Act. The order-sheet used is that prescribed by the High Court; and an order described as a "judgment" has been passed by the Officer in some of these cases, directing the restoration of the lands to the hillmen and imposing heavy fines on the person in possession. A plaint means "a private memorial tendered to a Court in which the person sets forth his cause of action, the exhibition, of an action in writing, a written statement claiming a set-off is deemed to be a plaint". If, therefore, the document presented by the opposite parties contained all the particulars required for a plaint, and when the Code specifically permits the commencement of a suit "in such other manner as may be prescribed", it is reasonable to hold that in each one of these cases suits have been instituted by the presentation of applications. Nor is it necessary that Court fees should be paid in order that such proceedings may be treated as suits. I do not find any justification for putting a narrow interpretation on the word "suit" or "plaint" as applied to these cases specially when vital question of title to property are involved. The applications filed by the hillmen are, in my judgment, suits for ejectment terminating in decrees. These are judicial proceedings triable by a Court and are not executive orders passed by an officer of Government. I would accordingly hold that the Agency Divisional Officer acted without jurisdiction in entertaining these applications after the 1st January 1937 when the Bengal Assam and Agra Civil Courts Act of 1887 came into operation in these areas.

11. Orissa Regulation No. V of 1951 which repealed the Orissa Agency Rules and the Ganjam and Vizagapatam Act of 1839, contains a saving clause which says that "any such investigation, any legal proceeding or remedy may be instituted, continued or enforced, as if this Act had not been passed". The principle applicable to a saving clause in a repealing enactment is that if the substituted enactment contains anything incompatible with the previously existing enactment, the jurisdiction under the repealed Act is wiped out. It is well established that no suitor has any vested right in the course of procedure nor has he a right to be tried in a particular Court. To hold that the Agency Divisional Officer still functions as a Court would result in the anomaly of there being two Courts to decide the same dispute. The legal proceedings now pending before the Divisional Officer-can still be continued or enforced in the ordinary Civil Courts of the area. The saving clause, therefore, does not warrant the continuance of these proceedings in the Agency Courts which owed their origin to the Ganjam

and Vizagapatam Act and have now ceased to exist.

12. I would, therefore, order that the proceedings in Mis. Case Nos. 79, 328, 33, 38, 48, 31, 115, 313, 162, 365, 136 and 292 of 1952, Nos. 14, 107, 126, 127, 250 and 332 of 1953, giving rise, respectively, to O.J.Cs. Nos. 3, 4, 18, 19, 23, 25, 6, 28, 33, 62, 68, 69, 27, 61, 63, 100, 54 and 55 of 1953 should be quashed as being without jurisdiction. The orders passed in Mis. Cases 136 of 1952, 292 of 1952 and 127 of 1953 (corresponding respectively to O.J.C. Nos. 68, 69 and 100 of 1953) imposing fines are set aside.

13. Several other contentions were raised by learned Counsel for the parties and Articles 19 and 31 of the Constitution were appealed to. It is not out of disrespect to them that I have not mentioned these contentions in detail as I am of opinion that whatever be the impact of the Constitution upon the provisions of the Act the proceedings pending before the Agency Courts are clearly without jurisdiction and are liable to be quashed on that ground.

14. The only other question that remains to be considered is whether the State should be made liable for the costs of these petitions. In several of these cases the transfers had taken place before 1917 and these were expressly saved by Section 8 of the Act. In all these cases the transferees, or heir successors-in-interest have been in possession for more than 12 years. It cannot be said that they are persons "claiming under the transfer" as they have already acquired title to the lands by prescription. By their letter No. 3189 R-Ag.18/48 dated the 23rd March 1948, the Government issued instructions to their officers not to interfere with the possession of such persons as had acquired title otherwise than by transfers. These instructions were repeated in D.O. letter No. 42 (R) dated the 10th April, 1949, from the Secretary to the Government of Orissa in the Revenue Department. In 1952, however, there was a sudden reversal of policy, and by their letter No. 227 (2) dated the 24th September, 1952, the Government of Orissa in the Revenue Department withdrew the instructions previously issued and directed the revenue authorities to take action "irrespective of the question of the limitation of twelve years". The letter further mentioned that "the question whether the land is to be restored or not is for the Court to decide on the merits of the case both on facts and on law". This letter was issued after Orissa Regulation No. 5 of 1951 was published in the Orissa Gazette on the 28th November 1951. It is clear that it was the desire of Government that their officers should resort to the Courts and leave it to them to decide whether restoration of the lands could be ordered in cases where the title to the lands had been lost by prescription. Further it would appear that Government themselves encouraged the institution of such cases by appointing a Special Government Pleader to conduct these cases on behalf of the hillmen. Doubtless Government have acted under a sense of public duty and were guided entirely by considerations of protecting the hill tribes. But it was an attempt to disturb upon insufficient grounds established titles and emaculate one class of persons to benefit another. They would have been perfectly within their rights if they had

directed their officers to take prompt action whenever cases of unauthorised transfers came to their notice. Unfortunately, the instructions conveyed in the latest letter of Government of the year 1952 had the effect of encouraging frivolous litigation, and causing much harassment to the present Petitioners. The records show that some of the Petitioners had obtained-transfers with the prior consent in writing of the Agent; some, again; purchased at Court auctions; in many of these cases the transfers had been effected prior to 1917; and in all these cases the alienations took place more than twelve years ago. In these circumstances, I think, we would be doing only imperfect justice if we do not order that the Petitioners should receive their costs from the State. I would accordingly direct that Opposite Party No. 2, who is impleaded as representing the Government, should pay the costs of the Petitioners in this Court as well as in the Court below. The hearing fee in each of these cases is assessed at Rs. 100/- (Rupees one hundred only).

15. After this judgment had been prepared Mr. Mohapatra, brought to my notice a decision of this High Court, reported in Kudura Padhan v. Gangadhar Behera where a Division Bench, of which I was a member, took the view that proceedings u/s 4 of the Agency Tracts Interest and Land Transfer Act, are judicial proceedings, and that this Court has jurisdiction to issue a writ under Article 226.

Rao, J.

16. I agree.