
(1994) 08 OHC CK 0025
In the Orissa High Court
Case No : A.H.O. No. 68/90

Pami Bisoyi and Others

APPELLANT

Vs

Lakshmana Bisoyi and Others

RESPONDENT

Date of Decision : 01-08-1994

Acts Referred:

Orissa Estates Abolition Act, 1951 — Section 39

Citation : AIR 1994 Ori 332 : (1994) 2 OLR 362

Hon'ble Judges : R.K. Patra, J;G.B. Patnaik, J

Bench : Division Bench

Advocate : P.K. Mishra, U.C. Swain and Y.S.N. Murty, for the Appellant; G. Rath, B.L.N. Swamy, N. Prusty, N. Pradhan, B.K. Nayak and B.R. Sarangi, for the Respondent

Final Decision : Dismissed

Judgement

R.K. Patra, J.—The unsuccessful plaintiffs have filed this Letters Patent Appeal against the judgment of a learned single Judge of this Court who has affirmed the judgment and decree of the learned Subordinate Judge dismissing the suit for declaration of their title over the suit land, for recovery of possession of the same from the receiver and for refund of Rs. 10,100/- kept in deposit in the Criminal Court.

2. The case of the appellants is that the suit land admeasuring A. 10.47 cents situated in the erstwhile Dharokote Estate was the occupancy holding of their grandfather late Bhabani (Ranjit) Bisoi, as occupancy raiyat Bhabani was paying rajbhag to the ex-Jamin-dar of the said estate. Subsequently, the rajbhag payable in respect of the suit land was granted as inam to Bhabani who in consideration of the said grant was paying favourable rent called "Katubadi" to the ex-Zamindar. Under this state of affairs, Bhabani became the owner in possession of the suit land in two capacities, one as occupancy raiyat and another as the holder of the inam. Following the death of Bhabani, the properties of the family were partitioned and the suit land come to be allotted to

Gangadhar, father of plaintiffs 1 to 4 who since then was in exclusive possession along with his sons. At the time of survey and settlement, the suit land was recorded in the name of Gangadhar. On 15-5-1917 Gangadhar mortgaged the suit land to one Bishnu Swain. As the debt was not satisfied the mortgagee, Bishnu Swain commenced O.S. No. 101 of 1928 in the Court of District Munsif, Aska and obtained a decree against the mortgagor Gangadhar for sale of the suit land. In execution of the decree, Bhagirathi Swain, son of the aforesaid mortgagee purchased the suit land in Court auction on 10-1-1934 and got delivery of possession of the same on 27-1-1937. The original defendant No. 1, his brother Dina-bandhu along with his father Ghana Bisoi created disturbances in the peaceful possession of the said auction purchaser which gave rise to initiation of a proceeding u/s 145, Cr. P.C. vide M.C. No. 31 of 1937 in the Court of Sub-Divisional Magistrate, Chamsur Division. In the said case, the possession of the auction purchaser Bhagirathi Swain was declared. On 4-4-1939 Bhagirathi Swain sold the suit land to plaintiffs under registered sale deed for valuable consideration and the vendees i.e. the plaintiffs were put in possession. They have thus, acquired title over the suit land as in and to right of the rajbhag as well as, as occupancy raiyat. Although plaintiffs had title and were in continuous possession, the suit land was recorded wrongly in the name of the defendants in the current settlement operation (1950-51) without their knowledge. The estate of Dhurakote vested in the State of Orissa by virtue of a notification dated 1-6-1953 and after the vesting the defendants made mischievous application to the Collector to accept the rent from them in respect of the suit land. Their request was, however, not accepted by the Collector. Thereafter, the defendants filed applications vide C.P. Nos. 121 of 1958 and 122 of 1958 for settlement of rent in respect of the suit land u/s 8A of the Orissa Estates Abolition Act, 1951 (hereinafter referred to as the O.E.A. Act"). Plaintiffs on an erroneous impression also filed applications vide C.P. Nos. 191 of 1958 and 942 to 948 of 1958 for settlement of rent. The Tahasildar without properly considering the applications passed order on 5-11-1964 settling the suit land with the defendants. Plaintiffs filed appeal challenging the order of the Tahasildar which did not yield result in their favour. Plaintiffs being the occupancy raiyat in respect of the suit land, the provisions of the O.E.A. Act did not affect their rights as such and the order of the Tahasildar is without jurisdiction. On the strength of the illegal order passed u/s 8A of the O.E.A. Act in their favour, the defendants threatened to create disturbances in the peaceful possession of the plaintiffs which gave rise to commencement of proceeding u/s 145, Cr. P.C. in Misc. Case No. 143 of 1964. The receiver appointed in the said proceeding deposited a sum of Rupees 10,190/- towards the value of the crop harvested during the years 1964 to 1969. As the order of the Tahasildar u/s 8-A of the O.E.A. Act threw cloud on the title of the plaintiffs they brought the suit claiming the reliefs already indicated.

3. The case of the defendants as pleaded in the written statement is total denial of the title and possession of Bhabani Bisoi, Ganga-dhar Bisoi and the plaintiffs

over the suit land. The mortgage said to have been done in the year 1917, the so-called Court auction and the sale made in the year 1939 in favour of plaintiffs are collusive and nominal transactions. Neither Gangadhar Bisoi nor the mortgagee nor plaintiffs ever possessed the suit land at any time. The suit land was originally granted as Bhalaloki nOukari inam to Bharat (Ranjit) Bisoi by the ex-Zamindar of Dharakote estate in the year 1919. He rendered service and enjoyed and possessed the suit land till his death. After his death, his son Khalli and his brother Ghana continued to render services to the ex-Zamindar and enjoyed the land in question and after their death, the original defendant No. 1 Baji and Maheswar (defendant No. 2) held the land as service holder. In the year 1930, the names of Khalli and Ghana were recorded correctly and the R.O.R. was granted in their favour in the year 1944. After vesting, on their applications the Tahasildar settled the land with the defendants with right of occupancy which was made after thorough and elaborate enquiry which was seriously contested by the plaintiffs. Nowhere in the said proceeding before the Tahasildar the plaintiffs raised the plea of their right of occupancy nor have they taken the stand that the suit land was originally raiyati land. In view of the orders passed by the O.E.A. authorities, the suit is hit by Section 29 of the O.E.A. Act.

4. On the basis of evidence adduced in the case, the learned Subordinate Judge held that:

(i) the suit land was given as "inam" and not the melwaram right alone and the plaintiffs were not occupancy tenants in respect of the suit land;

(ii) the suit is barred by the principle of constructive res judicata inasmuch as the plaintiffs did not take the stand before the Tahasildar (Estate Abolition Collector) : that the suit land was their occupancy holding;

(iii) the plaintiffs have no title over the suit land.

On the basis of the aforesaid findings, the learned trial Judge dismissed the suit.

5. The plaintiff's appeal before the learned single Judge ended in dismissal. The learned single Judge recorded the following findings;

(i) The evidence on record does not warrant any inference that Bhabani was an occupancy raiyat in respect of the suit land or that the inam granted to him comprised of only the (sic) interest.

(ii) Bhabani had not acquired the right of occupancy over the suit land by operation of 6 of the Madras Estates Land Act, 1908.

(iii) A settlement made u/s 8-A of the O.E.A. Act creates a fresh title and such settlement of the suit land in favour of defendants is not available to be questioned in the Civil Court.

6. Shri Murty, learned counsel for the appellants with vehemence advanced the very contentions which were raised by him and rebutted by the learned single Judge.

7. Before going into the areas of discussion, some undisputed facts emerging from the evidence on record need to be noticed. The Dharakote estate vested in the State on 1-6-1953 by virtue of the notification issued by the State Government u/s 3 of the O.E.A. Act. Both parties had applied for settlement of the suit land in their respective names on fair and equitable rent. They were C.P. Nos. 121 of 1958 and 122 of 1958 by the defendants and C.P. Nos. 191 of 1958 and 942 to 948 of 1958 by the original plaintiffs. All those cases were taken up together and after due enquiry, the Tahasildar, Aska who was the Collector under the O.E.A. Act by order dated 5-11-1964 (Ex. F) rejected the claim of the plaintiffs and held that Baji (Original defendant No. 1) and Maheswar (defendant No. 2) held the suit land immediately prior to the date of vesting and settled the same in their favour u/s 8(3) of the O.E.A. Act with right of occupancy. Against the order (Ext. F) plaintiffs preferred O.E.A. Appeals Nos. 36 of 1964 and 2 of 1965 under S, 9 of the O.E.A. Act and the appellate authority by order dated 9-3-1966 (Ext. 6) dismissed the appeals. The plaintiffs thereafter preferred second appeals Nos. (sic) Second Appeals Nos. 32 and 33 of 1965 before the Member, Board of Revenue who after hearing, by the judgment and order dated 9-3-1968 (Anne-xure-H) dismissed the appeals. Writ petition i.e. O.J.C. No. 1873 of 1968 was filed in this Court by the plaintiffs challenging the orders Exts. F, G and H of the statutory authorities which was dismissed on 22-7-1969 (Ext. 1). With the dismissal of the writ petition the orders passed as per Exts. F, G and H in favour of the defendants have become final. In the aforesaid proceedings under the O.Z.A. Act plaintiffs never put forth the case that the suit land was their occupancy holding.

8. The plaintiffs can get over the hurdle placed against them by the orders Exts. F, G and H only when if they would be able to establish that they had occupancy right over the suit land as raiyats became that interest remains unimpaired despite vesting of the estate. In Kumar Bimal Chandra Sinha Vs. State of Orissa, it was observed by the Supreme Court :

".....The Act was intended to abolish all proprietors, sub-proprietors, tenure-holders and under-tenure-holders with a variety of names but did not touch the interest of the raiyat....."

It is the case of the plaintiffs that their ancestor Bhabani (Ranjit) Bisoi was an occupancy raiyat which right the plaintiffs (plaintiffs 1 to 4) inherited from him and they still continued to be occupancy raiyats despite the vesting of the estate and consequent settlement of the land in favour of the defendants. Their further case is that while Bhabani was continuing to be an occupancy raiyat in respect of the suit land, rajbhag payable to him was granted to him as inam and he, in consideration of the grant of said inam, was paying "Katubadi" and cess to the ex-7amindar. Shri Murty relying on the decision of this Court in Gandu Panda v. Satya Nayak ILR (1962) Cut 146 contended that in respect of post-settlement inam the presumption is that only melwaram was granted and as such, Bhabani having been granted with such inam, he was the holder of the occupancy right in

respect of the suit land on the date the inam was granted. Plaintiffs' suit is for declaration of title as occupancy raiyat and for recovery of possession and as such, burden lies on them to prove their subsisting title over the suit land. Five witnesses were examined on behalf of the plaintiffs including plaintiff No. 1 who was P.W. 5 in support of their case. Number of documents were also produced by them. P.W. 1 was the Karan of the village from 1950 to 1962. He stated that as Karan he was required to go to the area to find out possession of different persons. After the abolition, account No. 7 was introduced showing the extent of land possessed by each raiyat in respect of each holding and rent payable by them. According to him Exts. 15 and 16 are two such registers and serials 1 and 2 in Ext. 15 relate to the suit land. Paru Bisoi, Choudhary Bisoi, Bijuli Bisoi and Dina-bandhu Bisoi are shown to be the persons in possession of the suit land. He further stated that serials 1 and 2 in Ext. 16 also relate to the suit land and aforesaid persons are noted to be the person's in possession of the same. In course of the cross-examination, he was confronted with the Ext. Q, the register containing account No. 2 and on perusal of the same he was constrained to admit that Maheswar Bisoi (defendant No. 2) has been recorded as Pattadar in respect of the suit land. The said Ext. Q relates to the fasli year in question. He candidly admitted by referring to Ext. R that it is No. 2 account for fasli 1363 maintained by him. With reference to Exts. R/1 and R/2, he stated that they relate to account No. 1 for fasli 1366 and 1369 which were maintained by him and in all these registers, namely, Exts. Q, R, R/1 and R/2, the defendants have been recorded as pat-tadars and nobody's name has been noted in Column 17 thereof as the persons in possession. Having found himself between horns of dilemma, he ultimately stated that account No. 7 was being maintained prior to the abolition but not in respect of Durmilla inam lands like the suit land. This witness, thus, stands condemned by himself and his evidence does not establish that Bhabani, the ancestors of plaintiffs was an occupancy raiyat or that the inam given to him consisted of rajbhag only. P. W. 2 stated that his village would be at a distance of three furlongs from the suit land. His knowledge about the suit land is derived from his observing the lands while going to other villages by footpath through the lands. He stated that the suit land was in possession of Gangadhar Bisoi, father of the plaintiffs 1 to 4 and subsequently Bhagirathi Swain was in possession of it for two years who took delivery through Court. It was brought out in his cross-examination that he could not give the boundary of the suit land. He introduced a new story in course of his cross-examination by stating that the suit land is Bhaloloki inam land and Gangadhar Bisoi was the first inamdar and the suit land was given as inam 20 years back to Gangadhar Bisoi. His evidence, thus, is of little help to the plaintiffs. P.W. 2 is a relation of the parties and Bhabani Bisoi was his father's sister's husband. He deposed that rajbhag of the suit land was given as inam by the Bharakote Zamindar to Bhabani. He stated about the family partition in which the suit land fell to the share of Gangadhar Bisoi.

In his cross-examination, it was brought out that he could not say what was the

share which fell to other brothers in the parties. He admitted to have not seen any document showing the lands allotted to each branch. He could not say how many years after Bhabani's death, Gangadhar got the title. He stated that the suit land was never inam land but was always raiyati land. He had not seen any document on the basis of which he could say that the suit land was raiyati land, He seems to have no knowledge about the family which is apparent from his admission that he could not say how many years ago Gangadhar died. P.W. 4 is a person who claimed to have his land adjoining to the suit land which he had sold to one Dandasi Bisoi. He merely speaks about the boundary of the suit land, is already noted, P.W. 5 is plaintiff No. 1. He stated that the suit land was raiyati land from the very beginning which he could come to know from his father and grandfather. He claimed that the Zamindar conferred the title of "Ranjit" on Bhabani and gave him the melwaram right in the suit land as inam and Bhabani died three years after he was conferred with the title "Ranjit". In his cross-examination, he stated that Bhabani was also given Bhaloloki service and rajbhag as inam arid prior to Bhabani, their family was enjoying the suit land as raiyati land paying rajbhag to the zamindar. He claimed to have filed documents in the suit to show that the suit land was raiyati land but was not in a position to point out any document in his support. From his evidence, it is clear that he has little knowledge about the nature and character of the suit land.

9. Learned counsel for the appellants tried to capitalise the statement of the defen-"dant No. 2 Maheswar that Bhabani was also the inamdhar in respect of the suit land. In order to appreciate his evidence, it is necessary to say as to what he actually had deposed. He stated that Bharat (Ranjit) Bisoi was his grandfather and the suit land was service tenure land and to his knowledge, Bharat rendered service and not the suit land. Ext. K is the patta. He was conferred with the title "Ranjit" by Zamind: for rendering the service. Later, on verification, he found that Babani, his great-grandfather was also inamdhar in respect of the suit land. From his evidence, it does not follow that Bhabani had occupancy right in respect of the suit land or that the inam was confined only to the rajbhag payable to the zamindar. The aforesaid statement relied on by the learned counsel for the appellants is consistent with the case of the defendants that the whole of interest in the suit land was the subject-matter of inam. Except the aforesaid oral evidence of the plaintiffs which is unreliable for the reasons already noted, there is no other evidence on their behalf in support of their case.

10. The defendants on the other hand relied on a number of documents in support of their case. Ext. K is the Sanad dated 20-5-1919 which shows that the major portion of the suit land was granted as inam to Bharat (Ranjit) Bisoi by the ex-zamindar as service inam. This Sanad shows that the land itself was given as inam and not the melwaram right. There is no material to show that if any such Sanad was granted to Bhabani. The grant of such Sanad supports the defendants case and establishes that the suit land itself was given as inam and not the melwaram right alone. To add to this, the plaintiffs in the O.E.A. proceeding which terminated against them never argued that the suit land was their

occupancy holding.

On considering the entire evidence and the submissions of the learned counsel for the parties, we hold that the plaintiffs have failed to prove that their ancestor Bhabani was the occupancy raiyat in respect of the suit land or that the inam granted to him comprised of only the rajbhag interest.

11. Let us examine if the decision of this Court in the case of Gondu Ponda ILR (1963) Cut 146 (supra) would be of any assistance to the appellants. Where no evidence is coming forth on the point as to the origin and nature of the beneficial interest in the land granted to the inamdar in lieu of remuneration for service to be performed by him, a presumption seems to have been raised that only melwaram was granted. After applying the said presumption, this Court in the aforesaid case held that the ancestors of the contesting defendants had the occupancy right and the service inam was only in respect of the melwaram. It is well known that a presumption is a logical inference of the existence of one fact drawn from other proved or known facts and is always rebuttable. In the case at hand, no such presumption can be raised in favour of the plaintiffs inasmuch as it is not their case that there is difficulty to determine the origin and nature of the grant. Their specific case is that Bhabani was the owner in possession of the suit land in two capacities, one as occupancy raiyat and: another as the holder of the inam and as already noted, they have failed to prove their case in this regard. It further appears that where the aforesaid presumption was pressed into service the grant of inam was either admitted or found as post-settlement inams which were being granted subsequent to the; permanent settlement for doing some personal service to the zamindar in lieu of wages. In the present case, there was neither admission by the defendants with regard to grant of inam in favour of the ancestors of the plaintiffs nor that the inam in question was post-settlement inam. For the aforesaid reasons, there is no question of applying any presumption in favour of the plaintiffs.

12. In view of our finding that the plaintiffs have failed to prove that their ancestor was not an occupancy raiyat or that the inam granted to him consisted of only rajbhag interest, the suit is clearly hit by Section 39 of the O.E.A. Act in view of the orders passed by the Estate Abolition Authorities vide Exts. F, G and H. The disputed land having been settled in the proceeding under Chapter II of the O.E.A. Act with the defendants, such settlement is not available to be questioned in the Civil Court except on the ground that there was any error of procedure or violation of the principles of natural justice. It is not the case of the plaintiffs that there was any error of procedure or the orders under the O.E.A. Act were passed in violation of the principles of natural justice.

13. No other point worth mentioning was urged on behalf of the appellants; In the result, we do not find any merit in this appeal which is accordingly dismissed with costs.

G.B. Patnaik, J.

14. I agree.