
(2019) 03 OHC CK 0037
In the Orissa High Court
Case No : RSA No.145 Of 2003

Panchu Rout

APPELLANT

Vs

Government Of Orissa & Others

RESPONDENT

Date of Decision : 15-03-2019

Acts Referred:

Code Of Civil Procedure, 1908 — Section 11, Order 7 Rule 7
Constitution Of India, 1950 — Article 141
Orissa Communal Forest And Private Lands (Prevention Of Alienation) Act, 1948 —
Section 2, 8(1)
Orissa Estates Abolition Act, 1951 — Section 8(1)

Citation : (2019) 03 OHC CK 0037

Hon'ble Judges : Dr. A. K. Rath, J

Bench : Single Bench

Advocate : Ramakanta Mohanty, Swapnesh Mishra, Ram Prasad Mohapatra,
Debasis Nayak

Final Decision : Dismissed

Judgement

Dr. A.K.Rath, J

1. This appeal at the plaintiff's instance assails the affirming judgment of the learned District Judge, Khurda at Bhubaneswar in RFA No.45 of 2002.
2. The dispute pertains to an area admeasuring Ac.0.180 dec. appertaining to Khata No.619, Plot No.457/1892 of Mouza-Chandrasekharapur. The kissam of the land is Gochar. The suit land situates in the capital city of Bhubaneswar.
3. The case of the plaintiff is that originally the suit land belonged to the ex-intermediary of Kanika. On 6.9.1945, the ex-intermediary inducted his father Banambar Rout as a tenant and issued Hat patta in his favour. The estate vested in the

State in the year 1953 after coming into operation of the Orissa Estates Abolition Act (in short, the OEA Act). His father possessed the land and raised

vegetables therein. Consequent upon vesting of the estate in the State, his father became a tenant under the State. He and his father had built up a residential house over the suit property. His father died in the year 1974. He is residing in the house and running a hotel therein. He is in possession of the suit land since the

time of his father peacefully, continuously and with hostile animus to the State for more than thirty years. In the remarks column of the hal settlement record-of-right, his possession has been reflected. While matter stood thus, on 6.9.1989 the

agents of the defendants forcibly entered into the suit land and threatened to dispossess him. He approached this Court in OJC No.2922 of 1989. This Court directed that he shall not be evicted without complying the requirement of law.

Thereafter, he filed T.S. No.213 of 1989 for declaration of title and permanent injunction. Defendant filed a written statement pleading, inter alia, that a case under the Orissa Public Premises (Eviction of Unauthorised Occupants) Act had

been initiated against him. On 5.4.1990, the officials of defendant no.5 stacked the materials over the suit land and stated that the suit land along with other lands had been allotted to it on 9.4.1990 by the Government in General Administration

Department. During pendency of the suit, defendant no.3 initiated OPP Case No.69/90 for eviction. In the said case, amin had measured the land and submitted a report that a portion of the wall of his house is standing over the Government

land. Taking advantage of his absence, defendant no.5 had constructed two numbers of HIG house. He made a protest; whereafter the construction was stopped. On 3.7.1993, defendant nos.3 and 5 with the help of police forcibly entered into

the suit land. With this factual scenario, he instituted the suit for declaration of title, confirmation of possession, permanent and mandatory injunction.

4. Defendant no.3 filed a written statement pleading, inter alia, that neither the father of the plaintiff, nor the plaintiff had right, title and interest over the suit land. Raja of Kanika had not settled the land in favour of plaintiff's father. Hat

Patta, Ext.1, is a forged document. The suit land vested in the State after abolition of the intermediary estate. The suit land had been recorded in the name of the Government in 1973 ROR. Kissam of the land is Gochar.

5. Defendant no.5 filed a written statement taking a similar stand to that of defendant no.3. It is pleaded that the suit land is communal land. The suit is liable to be dismissed for non-joinder of the villagers of Chandrasekharpur, who are

necessary parties.

6. Stemming on the pleadings of the parties, learned trial court struck seven issues. Parties led evidence, oral and documentary. On an anatomy of pleadings and evidence, learned trial court held that the plaintiff has no right, title and interest

over the suit land. Though no specific issue on adverse possession was framed, it dealt with the same and rendered a finding that the plaintiff had not perfected title by way of adverse possession. Held so, it dismissed the suit. Unsuccessful

plaintiff filed RFA No.45 of 2002 before the learned District Judge, Khurda at Bhubaneswar, which was eventually dismissed.

7. The second appeal was admitted on the substantial questions of law enumerated in ground nos.(a) to (c). The same are -

â??(a) Whether the learned courts below were correct in accepting the plea of the Estate Officer, Defendant No.3, combating the plaintiffs case when the same authority had adjudicated inter-parties under the provisions of Orissa Public Premises (Eviction of

Unauthorised Occupants) Act, 1962 (Ext.11) that the plaintiff is unequivocal because of title through possession and the same therefore operates as res judicata under Sec.11 Exp.VIII of CPC.

(b) Whether the learned courts below were correct in dismissing the plaintiffâ??s suit in view of the categorical direction of this Honâ??ble Court in OJC No.2922/1989 not to evict the plaintiff without following due of process, when (i)Admittedly there is no

proceeding under the O.P.P Act has yet been initiated against the plaintiff; (ii)Admittedly the OPP authority has conclusively decided inter parties that plaintiff cannot be evicted; (iii)Admittedly the defendants are trying to evict the plaintiff by force without taking

recourse to law;

(c) Whether the plaintiffâ??s suit can be dismissed for non-joinder of villagers merely because the suit land has been recorded as Gochar when there is no material to indicate that the suit land has been set apart for communal use as required under Sec.2 of the Orissa

Communal Forest and Private Lands (Prevention of Alienation) Act, 1948.â??

8. Heard Mr.Ramakanta Mohanty, learned Senior Advocate along with Mr. Swapnesh Mishra, learned counsel for the appellant, Mr. Ram Prasad Mohapatra, learned Addl. Government Advocate for respondents 1 to 3 and Mr. Debasis

Nayak, learned counsel for respondent no.5.

9. Mr. Mohanty, learned counsel for the appellant submitted that originally the suit land belonged to ex-intermediary of Kanika. The father of the plaintiff was inducted as a tenant. Ex-intermediary issued a Hat Patta to him on 6.9.1945, Ext.1.

After abolition of estate, he became a deemed tenant under Sec.8(1) of the OEA Act. The father of the plaintiff constructed a building over the suit land. The plaintiff is running a hotel therein. Since defendants tried to demolish the house

without taking recourse of law, plaintiff filed a writ petition being OJC No.2653 of 1989 praying not to evict him without due process of law. The writ petition was disposed of with a direction not to dispossess the plaintiff without following due

process of law. Placing reliance on the order dated 25.9.1993, Ext.11, passed by the Estate Officer, he submitted that defendant no.3 dropped OPP Case No.68 of 1990 with a finding that the plaintiff is in continuous possession over the suit

land from the time of his father. There is no evidence to disbelieve the rent receipts from 6.9.1945. The note of possession in the ROR cannot be ignored. Defendants have not initiated any proceeding against the plaintiff for eviction. The

plaintiff being in possession of the suit land is entitled to be protected from dispossession, unless and until he is evicted from due process of law. The Court has ample power under Order 7 Rule 7 CPC to mould the relief. He further submitted

that in earlier two writ petitions, this Court mandated that the plaintiff can be dispossessed by following due process of law. No proceeding has been initiated to evict the plaintiff from the suit land. There is no pleading that the suit property was

set apart for communal use as required under Sec.2 of the Orissa Communal Forest and Private Lands (Prevention of Alienation) Act, 1948. Thus the villagers of Mouza-Chandrasekharapur are not necessary parties to the suit.

10. Per contra, Mr. Mohapatra, learned AGA submitted that the plaintiff claims title over the suit property as a deemed tenant and simultaneously he claims title by way of adverse possession. The plea is inconsistent. The plaintiff has not taken

the plea that his father was a tenant under the ex-intermediary and after abolition of the estate, he became a deemed tenant under Sec.8(1) of the OEA Act. The plea is raised for the first time in this appeal. It is a mixed question of fact and

law. He further submitted that the estate vested in the State is free from all encumbrances. The landlord had not produced ekpadia in the name of the plaintiff or his father. There is no evidence on record that the tenant ledger was opened in

the name of his father or the plaintiff in the tahasil office. He further submitted

that the plaintiff cannot maintain a suit for declaration of title by way of adverse possession.

11. Mr. Nayak, learned counsel for respondent no.5 submitted that the order passed by the Estate Officer, Bhubaneswar, vide Ext.11, shall not operate as res judicata. Res judicata shall come into operation when the matter directly and

substantially in issue has been directly and substantially in issue in a former suits between the same parties. Respondent no.5 was not a party to the eviction proceeding initiated under the Orissa Public Premises (Eviction of unauthorised

Occupants) Act, 1962. Therefore, the order dated 25.9.1993 cannot operate as res judicata against respondent no.5. He further submitted that the eviction proceeding was dropped not on the strength of the plaintiff's case, but on the

weakness of State's defence. The Estate Officer while deciding the application under the Orissa Public Premises (Eviction of unauthorised Occupants) Act has limited jurisdiction. The Estate Officer de hors the jurisdiction in deciding the

right, title and interest of the parties. Eviction proceeding before the Estate Officer is summary in nature. The suit is not hit by res judicata. He further submitted that substantial question no.2 is a legal fiction having no independent existence.

He further submitted that the kissam of the land is Gochar. Learned appellate court has rightly held that it was incumbent on the part of the plaintiff to implead the villagers of the locality as parties. To buttress the submission, he cited the

decision of the apex Court in the case of Pandurang Ramchandra Mandlik (since deceased by his LRs) and another v. Smt. Shantabai Ramchandra Ghatget and others, AIR 1989 SC 2240.

12. Plaintiff asserts that originally the suit land belonged to ex-intermediary of Kanika. His father was inducted as a tenant on 6.9.1945. Hat patta, Ext.1, was granted by ex-intermediary. But then, in Ext.1, no khata number and plot number has

been mentioned therein. The signature of the person, who issued Ext.1 does not appear. Thus no reliance can be placed upon the same. Rent receipts, Ext.2 and 2/a, had been issued in the year 1943 i.e. prior to two years of issuance of alleged

Hat patta, Ext.1. In OJC No.2922 of 1989, Ext.H/1, the plaintiff averred that his father Banambar was in possession of the suit land since 1954. It demolishes the plaintiff's case that the father of the plaintiff was inducted as a tenant in the

suit land by the ex-intermediary on 6.9.1945. His father had not paid any rent to the Government. After abolition of the estate, the ex-intermediary had not submitted ekpadia in favour of the father of the plaintiff. No tenant ledger was opened.

became a deemed tenant under Sec.8(1) of the OEA Act. Simultaneously, a plea has been taken that he has perfected title by way of adverse possession. The plea is

mutually inconsistent. The substantial questions of law are answered accordingly.

19. The logical sequitur of the analysis made in the preceding paragraphs is that the appeal, sans merit, deserves dismissal. Accordingly, the same is dismissed. There shall be no order as to costs.

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