

(2018) 04 OHC CK 0041
In the Orissa High Court
Case No : S.A.No.308 of 1994

PRAFULLA KUMAR MOHAPATRA .DEAD. THROUGH HIS L.RS. APPELLANT
Vs
BIBHUTI BHUSAN MISHRA AND ANOTHER RESPONDENT

Date of Decision : 09-04-2018

Acts Referred:

Orissa Consolidation of Holdings and Prevention of Fragmentation of Land Act, 1972 — Section 9(3)
Orissa Tenancy Act, 1913 — Section 98
Orissa Estates Abolition Act, 1951 — Section 8A(1)

Citation : (2018) 04 OHC CK 0041

Hon'ble Judges : DR. A.K. RATH

Bench : Single Bench

Advocate : D.P.Mohanty, Minati Pal

Final Decision : Allowed

Judgement

Dr.A.K.RATH, J.

1. The plaintiffs are the appellants against a confirming judgment. The suit was for partition.Â

2. The case of the plaintiffs was that the suit land originally belonged to one Bhikari Sahu. A dwelling house exists over the same. The suit house was

the Chandana Sthitiban holding of Bhikari. Bhikari died leaving behind his widow- Sabi Dei and four daughters, namely, Raja, Mani, Baja and Durga.

After death of Sabi and Durga, three sisters alienated the suit land to the father of plaintiff no.1 by means of a registered sale deed dated 21.1.1930,

Ext.1. The father of defendants 2 to 5 and his brothers were the intermediaries. After abolition of estates, a compromise was arrived at between the

father of plaintiff no.1 and defendants 2 to 5. The father of plaintiff no.1 relinquished his half share in their favour. Accordingly, the suit land was

recorded jointly in the names of the father of plaintiff no.1 and defendants 2 to 5 in the R.O.R. published in the year 1977. It was further pleaded that

mother of plaintiff no.1 executed a registered gift deed in favour of plaintiffs 2 and 3 on 14.5.1979. Defendant no.1 has acquired 1/3rd interest in the

suit land. Defendants 2 to 5 have 1/6th share. The plaintiffs have half share over the suit land. With this factual scenario, they instituted the suit

seeking the relief mentioned supra.Â

3. Defendants 1 and 2 filed a written statement stating, inter alia, that the suit land did not belong to Bhikari Sahu. The intermediaries were in

possession of the land. There was amicable partition of the suit land amongst the co-sharers of the intermediaries. The brothers were allotted 1/3rd

share each. Two brothers sold their 2/3rd share to defendant no.1 by means of registered sale deeds dated 9.4.1973, Ext.B and 4.5.1976, Ext.C and

delivered possession. Defendant no.1 has acquired 2/3rd interest in the suit land. In Objection Case No.1578/77-80 filed under Section 9(3) of the

Orissa Consolidation of Holdings and Prevention of Fragmentation of Land Act (â??O.C.H. & P.F.L. Actâ??), the plaintiffs admittedÂ that defendant

no.1 has acquired 2/3rd share in the suit plot. The father of plaintiff no.1 had not acquired any interest over the suit land under Ext.1 as his vendors

were the strangers to the suit land. The father of plaintiff no.1 had not obtained possession of the suit land within the statutory period from date of

purchase. There is no document to show that father of plaintiff no.1 and the intermediaries entered into a compromise.Â

4. On the inter se pleadings of the parties, learned trial court framed nine issues. Parties led evidence, oral and documentary, to substantiate their

cases. Learned trial court dismissed the suit holding, inter alia, that the consolidation authority has no jurisdiction to decide the title in respect of the

homestead land. The orders passed by the Assistant Consolidation Officer in Objection Case No.1578/135 of 1979-80, Ext.D and 1597/154 of 1979-

80, Ext.E are nullity. The vendors of the father of plaintiff no.1 had no saleable interest in the suit land. The father of plaintiff no.1 had not taken over

possession of the suit land within the statutory period after purchase. The compromise between the father of plaintiff no.1 and intermediaries is a

myth. Feeling aggrieved, the plaintiffs filed T.A.No.8 of 1989 before the learned Second Additional District Judge, Cuttack. Learned appellate court

came to hold that the suit land was a Chandana holding in respect of which Durga was the recorded tenure holder. There is no document that father of Durga was the original recorded tenant of the suit land. Ext.1 does not convey any title to the father of plaintiff no.1. There was no compromise between the father of plaintiff no.1 and exintermediaries, wherein the father of plaintiff no.1 gave up his half share in the suit land in their favour. Ext.A, the order passed by the Collector under Section 98 of the Orissa Tenancy Act in Case No.1/98 of 1953-54 is an eloquent testimony of the fact that the land was abandoned on the death of the sole recorded tenure holder Durga. There is no pleading that the land was in khas possession of the intermediaries on the date of vesting. No order of settlement was made by the O.E.A. Collector settling the land in favour of exintermediaries. It further held that during pendency of the appeal, the O.C.H and P.F.L. Act was amended by the Orissa Act-2 of 1989. The homestead and other non-consolidable of holdings were brought within the purview of O.C.H and P.F.L. Act with effect from 10.9.1973. The defendants 2 to 5 had filed Objection Case No.1597/154 of 1979-80 under Section 9 (3) of O.C.H. and P.F.L. Act for deletion of the name of the father of plaintiff no.1. The Assistant Consolidation Officer rejected the prayer of the objectors holding that both parties have interest over the suit land. Since the consolidation authority has decided that both the parties have title and interest over the suit land, the jurisdiction of the Civil Court is ousted to decide the question of title afresh. The consolidation authority having not worked out the respective shares of the parties, the matter is left open for adjudication of shares by the Civil Court. It further held that the parties as recorded tenants are entitled to equal shares. Defendants 2 to 5 and their co-sharers have got 1/7th share each in the suit plot. The plaintiffs have got the rest 1/7th share therein. Defendant no.1 having purchased the interests of two co-sharers, he is entitled to 2/7th share in the suit land. Held so, it allowed the appeal. It is apt to state here that during pendency of the appeal, plaintiff no.1 died, whereafter his legal heirs have been substituted.

5. This appeal was admitted on the substantial questions of law enumerated in ground nos. A, B, C and H of the appeal memo. The same are:

â??A) The appellate court having discarded acquisition of title by both the parties as claimed by them respectively and having decided to partition the

suit property per-capita among the persons recorded in the Chakabandi Khatian, if it is justified to allow one share to all the plaintiffs together and two

shares to defendant no.1 alone.Â

B) The Chakabandi khatian having recorded the names of the defendants on the basis of their anterior title which, according to the learned appellate

judge, is lost on account of Section 8 A(3) of the Orissa Estates Abolition Act, if it is correct for the appellate court to hold that the Chakabandi

khatian give fresh title to the defendants.Â

C) If the appellate court is correct in applying the provisions of Section-98 of the Orissa Tenancy Act to the suit land which is admittedly homestead in

character and has been recorded as Chandna stitiban.Â

H) The consolidation authorities having accepted the title of the parties after contest, if it is open for the Civil Court to ignore the said adjudication and

agitate the question again.Â??Â

6. Heard Mr.D.P.Mohanty, learned Advocate along with

Mrs.Minati Pal, learned Advocate for the appellants. None appeared for the respondents.Â Â

7. Mr.Mohanty, learned Advocate for the appellants submitted that the plaintiffs have claimed title on the basis of a purchase by their predecessor-in-

interest. The defendants have claimed title on the basis of resumption under Section 98 of the Orissa Tenancy Act. The consolidation R.O.R. has

been published in the names of eight persons, namely, three plaintiffs and five defendants. He further submitted that learned appellate court has

allowed one share to all the three plaintiffs together, two shares to defendant no.1 alone and one share to each of the defendants 2, 3, 4 & 5 dividing

the suit property into seven sharers. Defendants 2, 3, 4 & 5 along with two other co-sharers, Arjuna Balabanta Rai & Bhimasen Balabanta Rai were

the intermediaries. Durga was the recorded Chandna stihitiban tenant. The intermediaries claimed to have resumed the land under Section 98 of the

Orissa Tenancy Act in the year 1953. They were in khas possession of the land on the date of vesting. The suit land is homestead. Defendant no.1

claims to have purchased the same from two of the co-sharer intermediaries. Learned appellate court discarded the title of the intermediaries on

account of their failure to apply for fixation of fair and equitable rent under Section 8A(1) of the O.E.A. Act. Learned appellate court allowed two

shares to defendant no.1 on the plea that he has purchased from two co-sharer intermediaries. The certified copy of the order claimed to be one under

Section 98 of the O.T. Act is blurred and nothing can be deciphered to establish the connecting link. No other document has been filed. Durga was the

last recorded owner as per C.S. Khatian of 1929-30. Durga died leaving three sisters, namely, Raja, Mani and Baja. After death of Durga, the three

sisters sold the properties to the father of plaintiff no.1 by means of a registered sale deed dated 21.1.30. Before the consolidation authority the

plaintiffs claimed title on the basis of the purchase of the year 1930. The defendants, on the other hand, claimed title on the basis of the order under

Section 98 of the O.T. Act. There was a compromise in which father of plaintiff no.1 relinquished half interest. He further contended that the

plaintiffs are entitled to half share in the suit property.Â

8. The consolidation authority held that both parties have title over the suit land. The question arises for consideration with regard to the entitlement of

the plaintiffsâ?? share. Learned appellate court came to hold that not only the plaintiffs have failed to establish that they have half share in the suit

land, but also the defendants have failed to establish their claim as the absolute owner thereof. In view of the fact that the consolidation authority

came to a conclusion that the parties have title over the suit property and the father of plaintiff no.1 has purchased the suit property from Raja, Mani

and Baja, the plaintiffs are entitled to half share. The substantial questions of law are answered accordingly.Â

9. In the result, the appeal is allowed in part. The judgment and decree of the lower appellate court and that of the learned trial court is modified to the

extent that the plaintiffs have half share and the defendants have half share in respect of the suit property. No costs.Â