

(1971) 07 OHC CK 0015
In the Orissa High Court
Case No : O.J.C. No. 353 of 1968

Pranakrushna Pradhan and Another

APPELLANT

Vs

Harekrishna Pradhan and Others

RESPONDENT

Date of Decision : 22-07-1971

Acts Referred:

Constitution of India, 1950 — Article 226

Orissa Estates Abolition Act, 1951 — Section 6, 7, 7(1), 8A

Citation : AIR 1972 Ori 91 : (1971) 37 CLT 945

Hon'ble Judges : G.K. Misra, C.J.;B.K. Patra, J

Bench : Division Bench

Advocate : G. Rath, for the Appellant; D. Mohanty and S.C. Das, for the Respondent

Final Decision : Allowed

Judgement

G.K. Misra, C.J.—The following genealogy would show the relationship of the petitioners and opposite parties 1 to 3.

ARTA PADHAN _____|_____ | | |
Dinabandhu Manguni Gurubari (died in 1958) (died issueless) (died in 1934)
_____|_____ | | | | Harekrishna
Ramkrushna Batakrushna Pranakrushana Balakrishna (O.P.1) (O.P.1) (O.P.1)
(P.1) (P.2)

The correctness of the genealogy is not disputed before us. The petitioner's case is that the family was possessed of agricultural lands and they and opposite parties 1 to 3 as cosharers were in joint possession of the disputed lands. Dinabandhu, father of opposite parties 1 to 3, died in 1958. Thereafter Harekrishna (O. P. No. 1) became the karta of the family. After the estate vested, O. P. No. 1 filed an application u/s 8-A of the Orissa Estates Abolition Act, 1951 (hereinafter to be referred to as the Act) for settlement of the disputed lands with O. Ps. 1 to 3 under Sections 6 and 7 of the Act. There was no reference to the petitioners in that application as being cosharers. Admittedly, O.

Ps. 1 to 3 were intermediaries and they have been so recorded. The petitioners have not been recorded as intermediaries. After getting notice of such an application the petitioners filed objection u/s 8-A (4) of the Act. The matter was enquired into. The Addl. Tahasildar, Salepur, came to the conclusion that the petitioners were cosharers of O. Ps. 1 to 3. Accordingly, he passed an order that the disputed lands would be settled both with the petitioners and O. Ps. 1 to 3 under Sections 6 and 7 (see Annexure 1), Against this order O. Ps. 1 to 3 filed an appeal before the Addl. District Magistrate, Cuttack who by his order (Annexure 2) dated 13-9-1966 remanded the case for further enquiry. After remand, evidence was taken and the Addl. Tahasildar came to the same conclusion that the petitioners were cosharers of O. Ps. 1 to 3 and the disputed lands would be settled with both the parties. That order was reversed in appeal at the instance of O. Ps. 1 to 3 by the Addl. District Magistrate, Cuttack by his order (Annexure 4) dated 22-4-1968. It is against this order that the present writ application has been filed under Articles 226 and 227 of the Constitution.

2. Mr. Rath for the petitioners contends that on the concurrent findings of both the Addl. Tahasildar and the Addl. District Magistrate that the petitioners were cosharers of O. Ps. 1 to 3 who were admittedly intermediaries and had filed the application u/s 8-A for settlement of the lands under Sections 6 and 7 of the Act within time, the Addl. District Magistrate was wrong in recording a finding that the disputed lands would be settled with O. Ps. 1 to 3 to the exclusion of the petitioners and his finding is liable to be set aside. This contention requires careful examination,

3. Before examining the relevant question of law it would be appropriate to notice the findings of both the sub-ordinate authorities. The Addl. Tahasildar came to the conclusion that the petitioners and O. Ps. 1 to 3 were living jointly in one house on payment of one Choukidari tax and they were in joint possession of the disputed agricultural lands and that rents and water-rates were being paid jointly by both the parties. On these findings he arrived at a clear conclusion that the petitioners were cosharers and that the disputed lands would be settled with them along with O. Ps, 1 to 3.

4. So far as the factual aspect is concerned, the appellate authority arrived at the same conclusion. His finding may be quoted in his own language as follows:--

"It is clear from the finding of the lower court that the parties were living together and enjoying the usufructs of the land peacefully until the recent settlement operations. After the settlement was taken up the appellants (O. Ps. 1 to 3) wanted to get the lands recorded in their name exclusively and there was protest from the respondents (petitioners). In the preliminary records both parties have been jointly recorded in respect of the land. The matter is still pending before the Settlement Officer for decision. As already discussed, the mere fact that the parties were living jointly cannot establish the claim of the respondents (petitioners) as intermediaries. It is for them to take shelter in proper court of law to establish their claim as intermediaries and get it so

recorded in the proper record of rights."

It would thus be seen that the appellate authority did not differ from the Addl. Tahasildar so far as the factual finding is concerned. On the findings of the appellate authority that the petitioners were in joint possession of the disputed agricultural lands with opposite parties 1 to 3 and that they were living together and that rents and water-rates were being paid jointly, there is no escape from the conclusion that both the parties were at least cosharers if not coparceners. We need not go into the question whether the parties continued to be coparceners or not as the petitioners are entitled to relief if they were cosharers.

5. Mr. Mohanty for opposite parties 1 to 3 fairly concedes that the appellate authority misdirected himself in examining the question whether the petitioners were intermediaries and ultimately recording a finding that they were not intermediaries and that they must establish their claim in proper court of law. This concession is well founded. Law is now well settled that on the application u/s 8-A of an intermediary for settlement of land under Sections 6 and 7 of the Act the benefit would accrue to the cosharers (see *Hemchandra Dansana Vs. Dolamani Dansana and Others*, & (1971) 1 Cut WR 605, *Smt. Gita Mohanty v. Gelhi Mani Bewa*).

It would be appropriate to extract Section 7 of the Act so far as relevant:

"7 (1) On and from the date of vesting--

(a) all lands used for agricultural or horticultural purposes which were in khas possession of an intermediary on the date of such vesting.

(b) x xx xx(c) x xx xx shall notwithstanding anything contained in this Act, be deemed to be settled by the State Government with such intermediary and with all the shareholders owning the estate and such intermediary with all the shareholders shall be entitled to retain possession thereof and hold them as raiyats under the State Government having occupancy rights in respect of such lands subject to the payment of such fair and equitable rent as may be determined by the Collector in the prescribed manner."

A simple analysis of this provision would indicate that on an application made by the intermediary, his cosharer would also get the advantage of being recorded with him as a raiyat in respect of lands which would be settled with the intermediary.

Section 8-A (1) prescribes that the intermediary shall file his claim in the prescribed manner for settlement of fair and equitable rent in respect of lands and buildings which are deemed to be settled with him u/s 6 or Section 7 before the Collector within six months from the date of vesting.

On a strict grammatical construction it may appear that it is only when the intermediary makes the application that his cosharer will derive the benefit u/s 7 (1) (a). The word "intermediary" in Section 8-A will not, however, with reference

to the context carry the same meaning as in Section 7 (1). u/s 7 (1) a distinction between the intermediary and his cosharers is maintained. A cosharer of an intermediary is entitled to file an application u/s 8-A. Otherwise it would entail great injustice inasmuch as if the recorded intermediary would not make an application his cosharers will be deprived of the benefit of settlement. We must, therefore, in the context of the two sections construe the word "intermediary" in Section 8-A (1) as including his cosharers. The question is, however, academic in this case as the intermediaries made the application and the cosharers filed the objection.

6. The position of law on the aforesaid analysis is that on the application made by opposite parties 1 to 3 for settlement of the disputed lands under Sections 6 and 7 the benefit would accrue to the petitioners as their cosharers.

7. The appellate authority misdirected himself in addressing himself to the question whether the petitioners were intermediaries or not. That was wholly irrelevant. If O. Ps. 1 to 3 were intermediaries the petitioners would derive the benefit as their cosharers. The only question which both the courts were called upon to decide was whether the petitioners were cosharers of O. Ps. 1 to 3, On the findings recorded even by the appellate authority there cannot be any escape from the conclusion that the petitioners were cosharers of O. Ps. 1 to 3 though he did not expressly use that expression. All the necessary ingredients of the jural relationship of one being the cosharer of another have been found in favour of the petitioners and the necessary legal inference has not merely been drawn by recording a clear finding that petitioners are cosharers.

8. Mr. Mohanty accordingly seriously contends that in exercise of our jurisdiction in a writ of certiorari we cannot ourselves record a finding that the petitioners were cosharers of O. Ps. 1 to 3 and the appellate order must be quashed and the case should be remanded to the appellate authority for recording such a finding. We are unable to accept such a contention. In exercise of jurisdiction in a writ of certiorari this Court can correct an error apparent on the face of the record. The error that was committed by the appellate authority was to record all factual findings and not to draw the legal inference therefrom. Such an error is apparent on the face of the record and can be corrected by us. To correct such an error, it does not require any intricate process of reasoning. We are, therefore, unable to agree with Mr. Mohanty that on the facts and circumstances of this case the matter should be remanded to the appellate authority merely to record a finding that the petitioners were cosharers of O. Ps. 1 to 3. The Estate Abolition authority had jurisdiction to decide the question if the petitioners were cosharers.

9. On the aforesaid analysis, we are clearly of the conclusion that the petitioners were cosharers of opposite parties 1 to 3. The disputed lands must therefore be settled under Sections 6 and 7 of the Act both with O. Ps. 1 to 3 and the petitioners.

10. In the result, the order of the appellate authority is quashed. A writ of

certiorari be accordingly issued. The writ application is allowed but in the circumstances without costs.

Patra, J.

11. I agree.