
(2018) 03 OHC CK 0032
In the Orissa High Court
Case No : S.A.No.114 of 1995

PREMRAJ TADI AND ANOTHER APPELLANT
Vs
DASHA MALLIK AND OTHERS RESPONDENT

Date of Decision : 06-03-2018

Acts Referred:

Citation : (2018) 03 OHC CK 0032

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

Bench : Single Bench

Advocate : Baibaswata Panigrahi, S.D.Routray

Final Decision : Dismissed

Judgement

Dr.A.K.RATH, J. Â

1. Plaintiffs are the appellants against a confirming judgment in a suit for permanent injunction.
2. The dispute pertains to use of water from a tank by the defendants. The case of the plaintiffs is that the suit tank originally belonged to one Gurubari Tadi, their paternal grandmother. After death of Gurubari, they are in possession of the tank. The defendants have no semblance of right, title and interest over the tank. The defendants forcibly cut the ridge and took water for irrigation of their land. With this factual scenario, the suit was instituted seeking the relief mentioned supra.
3. The defendants entered contest and filed a written statement denying the assertions made in the plaint. According to them, they use the water of the tank since 50 years. The tank had been developed by the Soil Conservation Department, Government of Orissa pursuant to the application made by the plaintiffs along with the villagers. In the year 1992, defendant no.1 made

an application before the Tahasildar, Barapali to accord permission for taking water from the tank. The Tahasildar accorded permission.

4. On the inter se pleadings of the parties, learned trial court framed six issues. Learned trial court came to hold that the plaintiffs have right, title and interest over the tank. The plaintiffs along with the villagers made an application to the Soil Conservation Department for development of the tank.

The Government spent an amount of Rs.1,00,000/- under E.R.R.P. scheme. The defendants cannot be enjoined from enjoying the water of the tank

for the purpose of irrigation during drought. Held so, it dismissed the suit. Unsuccessful plaintiffs challenged the judgment and decree before the

learned Additional District Judge, Bargarh in T.A.No.29 of 1994, which was eventually dismissed. Â

5. Heard Mr.Baibaswata Panigrahi, learned Advocate on behalf of Mr.S.K.Padhi, learned Senior Advocate for the appellants and Mr.S.D.Routray,

learned Advocate on behalf of Mr.B.Routray, learned Senior Advocate for the respondents.

6. Mr.Panigrahi, learned Advocate for the appellants submits that learned trial court having come to a finding that the plaintiffs have right, title and

interest over the tank in question, committed a manifest illegality and impropriety in dismissing the suit for permanent injunction. Merely because the

Government have spent an amount for development of the tank, no right has been accrued in favour of the defendants to use water of the tank to the

detriment of the plaintiffs. The defendants have failed to prove that they have unrestricted rights for use of water of the tank.

7. Per contra, Mr.Routray, learned Advocate for the respondents submits that the area, where the suit tank situates, is drought prone. The defendants

use the water of the tank since 50 years. The plaintiffs as well as the villagers made an application on 1.12.1987, vide Ext.A, to the Soil Conservation

Officer for development of the tank under E.R.R.P. scheme. It was stated in the said application that in the event the scheme is implemented, then the

plaintiffs or their successors would have no objection. There is no perversity or illegality in the findings of the courts below. Â

8. The plaintiffs along with the villagers made an application to the Soil Conservation Officer, Sambalpur, Burla on 1.12.1987, vide Ext.A, praying, inter

alia, to implement the E.R.R.P. scheme. Again on 21.12.1987, vide Ext.B, the

plaintiffs sent a reminder to the Soil Conservation Officer to implement the E.R.R.P. scheme. The Government spent an amount of Rs.1,00,000/- for development of the tank. While the matter stood thus, one of the villagers made an application before the Tahasildar, Barpali to use the water of the tank, which was registered as Irrigation Misc. Case No.6 of 1992.

By order dated 28.9.1992, vide Ext.D, the Tahasildar accorded permission to use the water. On a cursory perusal of Ext.A, it is evident that application was made to save the village from drought. The plaintiffs undertook that in the event the scheme is implemented, neither the plaintiffs nor their successors would have any objection on the use of the water of the tank by the villagers. The evidence on record reveals that the Government have spent an amount of Rs.1,00,000/- for development of the tank. The villagers use the water of the tank for irrigation of their land. Both the courts, on an anatomy of the pleadings as well as evidence on record, came to hold that the defendants use the water of the tank since long. There is no illegality or perversity in the findings of the courts below.

9. In the wake of aforesaid, the appeal is dismissed, since the same does not involve any substantial questions of law.