

(1963) 12 OHC CK 0001
In the Orissa High Court
Case No : Second Appeal No. 227 of 1962

Radha Bewa and Others

APPELLANT

Vs

Arakhita Sahu and Others

RESPONDENT

Date of Decision : 06-12-1963

Acts Referred:

Merged States (Laws) Act, 1949 — Section 7

Citation : (1964) 30 CLT 160

Hon'ble Judges : Narasimham, C.J

Bench : Single Bench

Advocate : L. Srinibas Misra, B.P. Patnaik and N. Mohanty, for the Appellant; A. Das, L. Rath and B.B. Rath, for the Respondent

Final Decision : Dismissed

Judgement

Narasimham, C.J.—This is an appeal from the judgment of the Additional District Judge of Puri, reversing the judgment of the Munsif of Nayagarh and decreeing the Plaintiff's suit for a declaration that they are the occupancy tenants in respect of the disputed lands and, as such, are entitled to recover possession of the same from Defendant No. 1 who is the Rani Saheba of Nayagarh. The Plaintiffs stated that by fourteen years continuous possession as tenants they acquired occupancy status in accordance with the revenue laws in force in that State. The main contest was by Defendant No. 1 who urged that the Plaintiffs were not in continuous possession for 12 years. On the other hand it was urged that the lands used to be granted on annual leases and sometimes the Plaintiffs took the lease, and on other occasions other tenants were allowed to cultivate the lands.

2. The main question for consideration by the two lower courts therefore was whether the Plaintiffs have established 12 years continuous possession of the suit lands as tenants so as to claim occupancy status under the revenue laws in force in Nayagarh State. I find that though there was no codified revenue law in Nayagarh State prior to its merger, the attestation rules, the Settlement rules,

the administration reports and the decisions of the Revenue authorities prior to merger were taken as the guiding factors. The lower appellate court rightly relied on a single Judge decision of this Court in *Giridhari Bairiganjan v. Bauribandhu Lenka S.A.* No. 257 of 1948, where, after examination of the attestation rules in force in Nayagarh State at the time of the preparation of the record-of-rights in 1928-32 and the Administration Report of 1942-43 it was held that in the absence of codified revenue law in that State it must be taken as established that 12 years continuous possession by a tenant confers on him occupancy status.

3. The trial court held that the Plaintiffs failed to prove 12 years continuous possession but the lower appellate court, after a full discussion of the entire evidence, oral and documentary, held that continuous possession from 1937 was established. Hence he held that the Plaintiffs acquired occupancy status under the revenue laws of Nayagarh State and decreed the Plaintiffs' suit. This is a pure finding of fact and cannot be assailed in second appeal.

4. Mr. Misra, for the Appellant, raised two questions of law. Firstly, he urged that on the statement in the plaint itself, it must be taken to have been admitted by the Plaintiffs that every year there was a notional surrender of the original tenancy and the creation of a new tenancy, in consequence of the annual auction and consequently the Plaintiffs could not claim continuous possession. Secondly, he urged that the suit was cognizable only in the Revenue Court and not in the Civil Court. In my opinion neither of these contentions can prevail.

5. On a fair construction of the plaint it cannot be held that the Plaintiffs admitted that in consequence of the annual leases taken every year by them there was a notional surrender of the land and fresh settlement of the same so as to amount to interruption of possession. On the other hand, they asserted in paragraph 6 of the plaint that they were in uninterrupted possession of the land for 14 years. It is true that there is an admission of regular auction by the landlord but in the context it must be taken to mean notional surrender, even for a moment, and fresh settlement. The relevant passage in paragraph 4 of the plaint is as follows:

Though the disputed lands were auctioned in favour of the Plaintiffs separately there has been no hindrance to their joint possession, nor can there be by any.

6. Mr. A. Das for the Respondents contended that the annual auction was for the fixation of the quantum of rent and that the Plaintiffs never admitted even a momentary interruption of their possession. The Plaintiffs' admission in the plaint and in the evidence only shows that rent used to be enhanced at the annual auction, but so long as possession was not disturbed, continuity is not interrupted in any way.

7. As regards the civil court's jurisdiction the only statutory provision applicable is Section 7(a) of the Merged States Laws Act which says that "all suits and proceedings between a landlord and tenant as such shall be instituted and tried in revenue Courts". The words "as such" should be given full significance. Here,

though the Plaintiffs claimed to be occupancy tenants under Defendant No. 1, the latter emphatically denied the existence of the relationship of landlord and tenant and urged that Defendants 2, 3 and 4 were inducted by him as tenants on the land. The right of the Plaintiffs was thus in dispute and as the relationship of landlord and tenant was not admitted by both parties, the jurisdiction of the Civil Court cannot be barred.

8. For the aforesaid reasons I see no ground to interfere with the judgment and decree of the lower appellate court. The appeal is dismissed with costs.