
(1970) 07 OHC CK 0004
In the Orissa High Court
Case No : Second Appeal No. 149 of 1964

Radhamohan Deb

APPELLANT

Vs

Chandrasekhar Mohapatra and Another

RESPONDENT

Date of Decision : 14-07-1970

Acts Referred:

Constitution of India, 1950 — Article 19, 31

Orissa Tenancy Act, 1913 — Section 79

Orissa Tenants Relief Act, 1955 — Section 10, 2, 3, 3(1), 3(2)

Citation : (1970) 36 CLT 1129

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

Bench : Division Bench

Advocate : S. Mohanty, for the Appellant; S.C. Mohapatra, for the Respondent

Final Decision : Dismissed

Judgement

B.K. Patra, J.—Plaintiff No. 1 is the Appellant and the appeal is directed against an affirming judgment of the Subordinate Judge, Bhubaneswas dismissing the Appellant's suit for a declaration that the Plaintiffs are entitled to collect fixed sanja rent as recorded in the Record-of-Rights from the Defendants. The Plaintiffs own the Tanki Madhya Swatwadhikari right in respect of the disputed lands in respect of which the Defendant's father is recorded as sikmi tenant liable to pay fixed sanja rent to the landlords. In respect of the years 1955-56, 1956-57, 1957.58 and 1958-59, there was dispute between the parties regarding the quantum of rent payable-the Plaintiffs claiming fixed sanja rent as recorded in the Record-of-Rights and the Defendant claiming to pay rent in accordance with the provisions of Sub-section (2) of Section 3 of the Orissa Tenants Relief Act, 1955 (hereinafter referred to as the Act). The Plaintiffs initiated a proceeding u/s 79 of the Orissa Tenancy Act (hereinafter referred to as the Tenancy Act) for appraisalment and division of the crops to recover rent as mentioned in the Record-of-Rights and were successful in the Courts below despite the contention put forward by the Defendant that the provisions of Section 9 of the Act applied to the case. The matter came up to this Court where it appears to have been

held that as the Rent Suit Officer had not been vested with the powers of a Collector under the Act, he had no powers to reduce the sanja rent fixed in the Record of Rights. Thereafter the Defendant filed an application u/s 9 of the Act claiming to pay rent in accordance with the provisions of Section 3(2) of the Act. He was successful in the Courts below and a revision application filed in this Court by the Plaintiffs against the order passed by the Collector appears to have been not admitted. It is there after that the suit giving rise to the present appeal was filed by the Plaintiffs substantially for a declaration that the Plaintiffs are entitled to get sanja rent as recorded in the Record-of-Rights and that the Act has no application to the case of the Defendant who is an occupancy tenant. It was contended in the alternative that even if the Act applied to the facts of the case, the proceeding u/s 9 thereof initiated by the Defendant more than sixty days after the dispute arose between the parties was barred by limitation, and that the Courts constituted under the Act erred in entertaining those applications and in giving relief to the Defendant. The Courts below negated these contentions and also held that disputes of the nature raised in the suit are not entertainable in a Civil Court in view of Section 10 of the Act.

2. The correctness of the decision of the Courts below is challenged on several occasions mentioned in the grounds of appeal including one based on Articles 19 & 31 of the Constitution, the contention being that the provisions of the Relief Act which affect or take away vested rights to property which is conferred on the Plaintiffs by the Record-of-Rights infringe Articles 19 and 31 of the Constitution. But the only two grounds which Mr. S. Mohanty learned Advocate for the Appellant pressed at the time of hearing are: (1) the Defendant being an occupancy tenant, the provisions of the Relief Act are not applicable to his case; and, (2) even if that Act applies, in view of the fact that the dispute regarding the rate of rent arose between the parties in the year 1955-56, the application u/s 9 of the Act filed some time after 1959, that is, long after sixty days from the date when the dispute arose, was barred by limitation, and consequently, the revenue Courts had no jurisdiction to entertain the application. These contentions require careful examination. This appeal came; in the first instance before our learned brother Justice Acharya, who, having regard to the importance of the questions raised therein, referred the case to a Division Bench. That is how the matter has come up before us.

3. In support of the first contention, Mr. Mohanty has invited our attention to the preamble of the Relief Act which runs as follows:

WHEREAS subsequent to the passing of the Orissa Estates Abolition Act, 1951 and pending further legislation relating to land records large scale eviction of tenants from actual cultivation of agricultural lands is being resorted to by owners of such lands; AND WHEREAS pending such further legislation it is expedient to afford relief to such persons by providing for their temporary protection from such eviction and for conferring on them certain privileges in the manner hereinafter appearing;

It is contended that the preamble clearly shows that the Act is designed to give temporary protection from eviction to such tenants as are evictable from the land and that as an occupancy tenant, such as the Defendant is, is not so evictable, the Act is not applicable to the case of such tenants. He also referred to the preamble to the Orissa Tenants Protection Act, 194-8 which has been replaced by the Relief Act. As in the Relief Act, the preamble to the Tenants Protection Act also shows that it was designed to provide for the temporary protection of certain classes of tenants. The main purpose of the Relief Act undoubtedly is to afford temporary protection from eviction of tenants who were in lawful cultivation of the lands on the 1st day of July, 1954. To that extent, the persons a protected are naturally the tenants who have not got any permanent right of occupancy in the land. But the Relief Act does not stop at merely affording protection to tenants from eviction. It also makes ancillary provisions regarding the maximum rent payable by such tenants, during the period they are protected from eviction. Clauses (b) and (o) of Sub-section (1) of Section 3 of the Act make provision for the same. Clause (b) provides that no such protected tenant shall be found to pay more than one-fourth of the gross produce of the land or the value of one-fourth of the estimated produce as rent to the landlord. In the provisos that followed, the maximum rent payable per acre of land is also declared. It was obviously felt by the Legislature that as a result of these provisions regarding payment of rent, a tenant, who, but for the provisions of the Act, was liable to eviction from the land, would pay to the landlord during the period of such protection, much less rent than what an occupancy tenant would pay for similar lands according to the previously settled rent. That appears to be the reason why the Legislature enacted Sub-section (2) of Section 3 of the Act which runs as follows:

3(2) Notwithstanding anything contained in Sub-section (1), no tenant holding land on produce rent with permanent and heritable rights of cultivation therein on or after the first day of July, 1954 shall, irrespective of whether such land in cultivated by the tenant himself or not, be liable to pay more than two thirds of the rate payable in accordance with Clauses (b) and (C) of Sub-section (1).

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Mr. Mohanty contends that to claim the benefit of Sub-section (2) of Section 3, one should first be a "tenant" and that the Defendant who has occupancy right in the land, is not a "tenant" as defined in Act because he cultivates his own land and not the land of another person. The expression "tenant" is defined in Section 2(j) of the Act and the material portion thereof runs thus:

2(j) "tenant" means a person who under the system generally known as Bhag, Sajna or Kata or such similar expression, or under any other system law, contract, custom or usage cultivates the land of another person on payment of rent in cash or in kind or in both or on condition of delivering to that person:

(i) either a share of the produce of such land, or

- (ii) the estimated value of a portion of the crop raised on the land, or
- (iii) a fixed quantity of produce irrespective of the yield from the land, or
- (iv) produce or its estimated value partly in anyone of the ways described above and partly in another;

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We are not impressed with Mr. Mohanty's argument that an occupancy tenant cultivates his own land and not the land of another person. It is conceded by him that under certain circumstances, even an occupancy tenant can be evicted from his land by the landlord. We are, therefore, of the view that the expression "tenant" as defined in the Act does not exclude an occupancy tenant who has permanent and heritable right of cultivation in the land. On a plain reading of Sub-section (2) of Section 3 it is clear to us that this sub-section is dealing with the case of occupancy tenants. The preamble no doubt is the key to the statute and affords a clue to the scope of the statute. I where the words thereof, construed by themselves without the aid of the preamble, are capable of more than one meaning. But where an enactment is itself clear and unambiguous, the preamble cannot qualify or cut down the scope of the enactment.

There is also another rule of construction and that is that an ambiguity must not be created or imagined in order to bring in the aid of the preamble. If the Legislature has thought fit to give protection to certain persons and the protection actually given extends to persons other than those whom a straight interpretation of the preamble would embrace, it is not open to the Court to question the right of the Legislature to go beyond what was stated in the preamble as the reason for the legislation. The Legislature may very well have done actually a little more than what it started to do. Mr. Mohanty then relies on a Bench decision of this Court in *Jagannath Brahmachari v. Jogi Sahu and Ors.* 26 C.L.T. 437, where referring to the Orissa Tenants Protection Act, Mohapatra, J. had observed that the Act manifestly is not intended for the tenants who have abiding or permanent interests under ordinary laws of the country, that is under the Orissa Tenancy Act itself, and that the tenants who are not entitled to sufficient protection under the ordinary law provided for in the Orissa Tenancy Act are intended to be temporarily protected under the provisions of this special Act, namely, Orissa Tenants Protection Act. In that case, the controversy was whether the Defendants were out and out trespassers or were occupancy tenants, and the question arose whether the Civil Court held that it had jurisdiction and recorded evidence and decided that the Defendants were trespassers. The first appellate Court however held that the Civil Court had no jurisdiction to try the suit and, therefore, dismissed it. It is against that decision that the second appeal was filed in this Court in which Mohapatra, J. had made the observations referred to above. "It would thus be seen that the Bench had no occasion to consider the effect of Sub-section (2) of Section 3 of the Act and there is nothing in the judgment which would go counter to the view we take

that Section 3(2) covers the case of an occupancy tenant.

4. Regarding the question of limitation, the argument advanced on behalf of the Respondent by the learned Counsel Mr. S.C. Mohapatra is that a dispute regarding the quantum of rent payable by the tenant is one that arises every year when rent is payable and that as such the application u/s 9 of the Act filed by the Respondent cannot be deemed to be barred by limitation merely because it was not filed within 60 days from the date when the dispute first arose in the year 1955-56. For the purpose of the present appeal, it is not necessary for us to decide the question finally because we find that the Appellant's contention on this point is found to fail on another ground. In view of our finding that an occupancy tenant, such as the Respondent is, comes under the purview of Section 3(2) of the Act, it follows that he was entitled to be an application u/s 9 of the Act before the Collector. The Collector, therefore, had jurisdiction over the subject matter and also over the party. In the circumstances, merely because the Collector and the other appellate Courts constituted under the Act made an error in deciding a vital issue in the suit, namely, limitation, it cannot be said that they acted beyond their jurisdiction. Courts have jurisdiction to decide right or to decide wrong, and even though they decide wrong, the orders passed by them cannot be treated as nullities- *Ittavira Mathai Vs. Varkey Varkey and Another*, . In this view of the matter, the orders passed by the revenue Courts u/s 9 of the Act had become final. In view of the bar contained in Section 10 of the Act that subject to the provisions of Section 9, disputes arising between a landlord and a tenant are cognizable by the Revenue Courts and cannot be cognizable by Civil Courts, the Courts below were also right in holding that they had no jurisdiction to try the suit.

5. In the result, the appeal fails and is dismissed with costs.

G.K. Misra, C.J.

6. I agree.