
(1979) 11 OHC CK 0006
In the Orissa High Court
Case No : Second Appeal No. 221 of 1978

Rama Chandra

APPELLANT

Vs

Gadadhar Mohapatra and Others

RESPONDENT

Date of Decision : 06-11-1979

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 31, Order 8 Rule 1
Evidence Act, 1872 — Section 13 , 18

Citation : AIR 1980 Ori 54 : (1980) 49 CLT 215

Hon'ble Judges : P.K. Mohanti, J

Bench : Single Bench

Advocate : L. Rath, A.K. Misra and B.S. Misra, for the Appellant; R. Mohanty, P.K. Sengupta and M. Manwar, for the Respondent

Judgement

P.K. Mohanti, J.—The second Appeal is by the plaintiff against a reversing decree.

2. The suit was for a declaration of title to and confirmation of possession over the land in dispute measuring 48 decimals which stand recorded in the names of Arta Sethi and Dama Seth as Desa Heta Dhoba Jagir in the C. S. record of rights finally published in the year 1928--vide Ext. 3. Arta died issueless leaving behind him his widow Fakiri Bewa. Dama died leaving behind him his son Saratha. The plaintiff claiming himself to be the son of Saratha came to court with the allegation that he had inherited the half-share of Saratha and had purchased the remaining half-share from Fakiri Bewa by a registered sale deed. Thus, he claimed to be the full owner of the entire 48 decimals of land. After abolition of the intermediary interest, the plaintiff filed an application u/s 8(3) of the Orissa Estates Abolition Act for settlement of the land in his favour. The application was contested by the defendants who are Brahmin Mahajans of village Brahmanpada. The plaintiffs application was rejected by the O. E. A. Collector on the ground of non-maintainability. Thereafter, the defendants filed an application before the O. E. A. Collector and an area of 45 decimals out of the suit land was settled in their favour and the remaining area of 3 decimals with the houses standing thereon

was settled in favour of the plaintiff. The plaintiff, however, claimed to have been in possession of the entire 0.48 acre. He came to court as the defendants created troubles in his possession taking advantage of settlement of 45 decimals of land in their favour.

3. The suit was resisted by the defendants on the grounds that the plaintiff is not the son of Saratha and that the sale by Fakiri Bewa to the plaintiff was illegal as the disputed land being service jagir land was not transferable. Their further contention was that after the death of Dama and Arta, the land was resumed by the ex-landlord and settled with the deity Jagulei Thakurani through the Brahmin Mahajans of the village as its marafatdars in the year 1930. It was also contended that the suit was bad for nonjoinder of the deity Jagulei Thakurani and it was hit by Section 39 of the O. E. A. Act. It was further contended that the defendants had perfected their title to the suit land by adverse possession.

4. The trial Court decreed the suit, holding as follows:--

(1) The plaintiff is the son of Saratha and he inherited the properties of Saratha as his sole legal heir.

(2) The sale of the suit land by Fakiri in favour of the plaintiff was valid.

(3) The suit is not hit by Section 39 of the O. E. A. Act, as the settlement of the land with the deity was not made under the provisions of the O, E. A. Act.

(4) The suit was not bad for non-joinder of Jagulei Thakurani.

(5) The plaintiff has title to the suit land and he has been in possession of the same throughout.

The appellate court reversed the decree of the trial court and dismissed the suit on the following findings:

(1) Plaintiff is not the son of Saratha.

(2) The question of sale by Fakiri Bewa to the plaintiff could not be decided since the sale deed had not been produced in Court.

(3) The defendants had failed to establish that the suit land was resumed by the superior landlord and settled with the deity Jagulei Thakurani.

5. Mr. L. Bath, the learned counsel for the appellant advanced the following contentions :

(1) The learned Subordinate Judge having illegally rejected the judgment Ext. 1 as inadmissible in evidence, his finding on the question of relationship between the plaintiff and Saratha Sethi has been erroneous.

(2) The sale of the suit land by Fakiri Bewa in favour of the plaintiff having been admitted by the defendants in their written statement, the learned Subordinate Judge should not have avoided to decide the question of plaintiff's title on the

ground of non-production of the sale deed.

(3) The plaintiff-appellant is entitled to a declaration of his possessory title over the suit land.

6. Regarding the first contention, it appears that in a previous suit filed by one Nilamani Bewa against the present plaintiff, the latter had claimed to be the son of Saratha Sethi. It is the appellate judgment of the litigation which was relied upon by the plaintiff to show that he has been recognised to be the son of Saratha Sethi. The learned Subordinate Judge rejected the judgment on the ground that it is not a judgment inter partes and does not come within the purview of Section 13, Evidence Act. The reasoning adopted by him is that a judgment as to whether a certain person was or was not the heir to another is neither a transaction nor a fact within the meaning of Section 13 of the Indian Evidence Act and no reliance could consequently be placed upon it, Reliance was placed on Field's Law of Evidence, 10th Edition, Volume II at page 1066 and AIR 1952 PC 76 in support of the above proposition. No citation as AIR 1952 PC is available. There is also no reference to the principle relied upon by the learned Subordinate Judge at page 1066 of the Field's Law of Evidence. 10th Edition, Volume II. It is thus, apparent that the learned Subordinate Judge has not looked into the citations given in his judgment. There are authorities for the proposition that a judgment not later partes is admissible u/s 13, Evidence Act to establish an instance in which the relationship was asserted and recognised or denied.

7. In *Gujja Lal v. Fatten Lull* ILR (1881) 6 Cal 171 a question arose whether a judgment not inter partes was admissible u/s 13, Evidence Act and Garth, C. J. expressed the view that the former judgment was not a transaction and that the right claimed in the particular suit was not a right within the meaning of Section 13. A Full Bench of the Allahabad High Court in the case of *Collector of Gorakhpur v. Palakdhari Singh*, ILR (1890) 12 All 1 came to a different conclusion and held that such judgments were admissible u/s 13. Their Lordships observed that the majority view of the Calcutta decision referred to above had put too narrow a construction on the word "right" as used in Section 13 and that the term "right" includes not only incorporeal rights, but also rights of ownership. It was further held that though the judgment itself was not a transaction, the suit or the litigation in which it was pronounced might be treated as a transaction or/ and instance in which a right may have been asserted, acknowledged or denied. In the case of *Sital Das v. Sant Ram* AIR 1954 SC 606 the Court held that in a dispute as to the succession to the office of a Mohunt, a previous judgment in a suit by the former Mohunt is admissible as a transaction in which a person from whom one of the parties purported to derive his title, asserted his right as a spiritual collateral of the former Mohunt and on that footing got a decree. Their Lordships also observed that although the judgment in the previous suit was not by any means conclusive and had got to be weighed and appraised for what it is worth, it could be used in support of the oral evidence adduced in the case (para

20). In the case of *Ajjarapu Subbarao Vs. Pulla Venkata Rama Rao and Others*, a Division Bench held that the previous judgment was admissible u/s 13 of the Evidence Act to show that the right of the plaintiff as the son of the sixth defendant was claimed and recognised. To the similar effect is another Division Bench decision reported in *Smt. Pentapati Venkatratnam and Others Vs. Karri Venkatanarasayamma and Others*, . In the case of *Yamunabai v. Dhannalal* (1929) 114 IC 616 a judgment not inter partes in a previous case in which an adoption was upheld was held to be a relevant piece of evidence u/s 13 of the Evidence Act. In the case of *the Secretary of State for India v. Subraya Karantha* 1915 M WN 962 Section 13 of the Evidence Act was held applicable to the class of cases where the alleged relationship admitted of assertion, denial and recognition. In the case of *Raj Fateh Singh v. Baldeo Singh* (1928) 109 Ind Cas 310 (Oudh) a judgment in which the illegitimacy of a person is recognised is admissible in evidence u/s 13 of the Evidence Act where the question of his legitimacy is in issue in a subsequent suit. In view of the authorities cited above, it may be taken to be fairly settled that the judgment in a previous suit though not inter partes is admissible in proof of a transaction or particular instance in which the relationship was asserted and recognised or denied. A judgment in the previous suit though not conclusive is admissible in evidence like any other fact to be weighed in the balance. It is not the correctness of the previous decision but the fact that there has been a previous decision that is established by the judgment. The finding of fact arrived at on the evidence in one case cannot be evidence of that fact in another case (See *AIR 1929 PC 99 Gopika Raman Roy v. Atal Singh* *AIR 1931 PC 89 Gobinda Narayan Singh v. Sham Lal Singh* *AIR 1931 89 (Privy Council)*). The learned Subordinate Judge went wrong in excluding the judgment (Ext. 1) from consideration. It is, therefore, necessary that he should decide the question of plaintiff's relationship with Saratha Sethi on a consideration of the judgment -- Ext. 1 -- along with the other evidence on the record.

8. With regard to the plaintiffs claim of title in respect of half-share of Arta Sethi, the learned Subordinate Judge observed that that question could not be decided in the absence of the sale deed on which the plaintiffs claim was based. It appears that in para. 14 of the written statement it was admitted that Fakiri Bewa had executed a sale deed in favour of the plaintiff. It was, however, alleged that as the disputed property was burdened with service, the sale deed executed by Fakiri Bewa in favour of the plaintiff was illegal, inoperative and void. The trial court found that the plaintiff is entitled to continue his right over the suit land so long as he continues to render service. The appellate court did not consider the question of title mainly on the ground that the sale deed had not been produced. In view of the defendants' admission in the written statement about execution of the sale deed, the learned Subordinate Judge should decide whether the plaintiff Lad acquired any title to the suit land by virtue of his purchase from Fakiri Bewa.

9. On the question of possession, the trial court in para. 12 of its judgment came to the finding that the plaintiff has been in continuous possession of the suit

land. The lower appellate court did not at all consider the question of possession. Having reached the conclusion that the defendants had failed to establish resumption of the land by the ex-landlord and settlement of the same with the deity Jagulei Thakurani through the defendants as its marfatdars, the lower appellate court should consider whether the plaintiff is entitled to a declaration of his possessory title over the suit land even if it is held that he has not title to the same.

10. In view of the foregoing discussions, the appeal is allowed and the decree passed by the lower appellate court is set aside. The case is remitted to the lower appellate court for rehearing of the appeal and a fresh disposal of the same in the light of the above observations. Parties to bear their own costs in this appeal.