

(1984) 10 OHC CK 0019
In the Orissa High Court
Case No : Second Appeal No. 117 of 1979

Ramchandra Kar	Vs	APPELLANT
Jagannath Swamy and Others		RESPONDENT

Date of Decision : 30-10-1984

Acts Referred:

Orissa Land Reforms Act, 1960 — Section 67
Sri Jagannath Temple (Administration) Act, 1952 — Section 33

Citation : (1984) 2 OLR 1058

Hon'ble Judges : J.K. Mohanty, J

Bench : Single Bench

Advocate : A.S. Naidu and P. Mohanty, for the Appellant; G.B. Mohanty, for the Respondent

Judgement

J.K. Mohanty, J.—Plaintiff (respondents Nos. 2 and 3) claiming themselves as the managers and marfatdars of plaintiff No. 1, the Lord Jagannath, filed the suit for recovery of possession of the suit lands belonging to plaintiff No. 1 and for mesne profits from the year 1971-72.

2. The plaint case is that the suit lands measuring Ac. 1. 38 cents belonging to plaintiff No. 1 were in their possession and management since the time of their ancestors. They were utilising the usufructs thereof for offering bhoga to the deity. They were getting the lands cultivated through tenants and were obtaining the Rajbhag from them. In the year 1964 they inducted defendant No. 2 as a tenant, but as defendant No. 2 did not say any Rajbhag, they filed O.L.R. Case No. 274 of 1966 before the Revenue Officer, Kodala, for realisation of Rajbhag. In that proceeding defendant No. 2 denied the Landlordship of the plaintiffs and took the plea that he had been inducted as the tenant by defendant No. 1. The said O.L.R. case was dismissed with an observation that plaintiffs Nos. 2 and 3 should establish their right in a proper Court of law. Hence the suit.

3. Defendants filed a joint written statement wherein they have admitted the title of plaintiff No. 1, the deity, over the suit lands, but they have denied the claim of

plaintiffs Nos. 2 and 3 that they were in possession and management of the suit lands since the time of their ancestors. According to them defendant No. 1 was in possession and enjoyment of the suit lands since the time of his ancestors and defendant No. 2 was inducted as the tenant for cultivating the suit lands in the year 1963. It was further pleaded that after enactment of Shree Jagannath Temple Act, 1954 (Orissa Act No. 11 of 1955) the Administrator is empowered to file any suit on behalf of plaintiff No. 1, the deity, so the suit filed by the plaintiffs was not maintainable. Further as defendant No. 1 has been in possession and management of the suit lands for more than the statutory-period, he has perfected his title over the same by way of adverse possession. After hearing both parties the learned Subordinate Judge held that plaintiffs Nos. 2 and 3 are the marfatdars and managers of the suit lands on behalf of plaintiff No. 1 and defendant No. 2 was inducted as a tenant by them and decreed the suit. In appeal before the Addl. District Judge, Ganjarn-Boudh, Barhampur, the decision of the Subordinate Judge was upheld. Hence the appeal.

4. Both the Courts below on a careful consideration of the evidence on record have come to the conclusion that the plaintiffs Nos. 2 and 3 are the managers and marfatdars of the suit lands on behalf of plaintiff No. 1, the deity. After hearing learned counsel for both sides and considering the facts and circumstances of the case, I am also in agreement with the learned Courts below that the plaintiffs Nos. 2 and 3 are the managers and marfatdars of the suit lands on behalf of plaintiff No. 1, the deity.

5. Mr. Naidu, learned counsel appearing for the appellant, submitted that the suit is not maintainable as the Administrator has not been made a party and these plaintiffs Nos. 2 and 3 are not competent to file the suit. In support of his contention he relied on Section 33 of Shree Jagannath Temple Act, 1954. According to him, only the Committee shall be entitled to take and be in possession of all movable and immovable properties belonging to the "temple". "Temple" as defined in Sub-section (d) of Section 2 of the Puri Shree Jagannath Temple (Administration) Act, 1952 means the temple of Lord Jagannath at Puri, other temples within its premises, all their appurtenant and subordinate shrines, other sacred places and tanks and any additions which may be made thereto after the commencement of this Act. Thus it is seen that this relates to the properties belonging to the temple only where others have no interest. In this case the plaintiffs have pleaded that the usufructs of the lands have been enjoyed by the plaintiffs Nos. 2 and 3 after offering their bhoga to plaintiff No. 1, the deity. The defendants in their written statement while denying the claim of the plaintiffs assert that it was the first defendant who was enjoying the usufructs of the said lands after offering bhoga to plaintiff No. 1. It was thus the case of both parties that either the 2nd and 3rd plaintiffs or the 1st defendant would be the real beneficiary subject to the condition that usufruct of the said lands would be enjoyed after offering bhoga to the deity. Such being the admitted case of the parties, it cannot be said that the disputed properties belonged to the "temple". So the contention of the learned counsel for the

appellant that the suit is not maintainable cannot be sustained.

The next contention of the learned counsel for the appellant is that there is a bar u/s 67 of the Orissa Land Reforms Act and there are series of decisions of this Court on this point. Section 67 of the Act provides:

"67. Bar of Jurisdiction of Civil Courts-Save as otherwise expressly provided in this Act no Civil Court shall have jurisdiction to try and decide any suit or proceeding so far as it relates to any matter which any officer or other competent authority is empowered by or under this Act to decide."

In this case admittedly the plaintiffs have averred that defendant No. 2 was a tenant under them and he is estopped from denying their title and possession over the suit lands. In view of this admitted position, if the plaintiffs want to recover their share of the usufructs or to evict the tenant-defendant No. 2, then necessarily they have to take shelter under the provisions of the Orissa Land Reforms Act, 1960 and in my view to that extent Section 67 stands as a bar and the contention of the learned counsel for the appellant to this extent is justified.

5. After hearing learned counsel for both sides, I am of the view that decision of the learned Courts below that the plaintiffs Nos. 2 and 3 are the managers and marfatdars of the suit lands on behalf of plaintiff No. 1, and defendant No. 1 has no manner of right, title, interest or possession over the suit lands is sustainable. The decree of the Courts below is confirmed to that extent. However, the order of the trial Court that the plaintiffs will be entitled to recover the mesne profits from defendant No. 2 from the date of the suit or from 1971-72 till the date of judgment and decree and that they will recover possession from defendant No. 2 cannot be allowed and is set aside. The plaintiff must approach the authorities under the O.L.R. Act for eviction of defendant No. 2 who is admittedly a bhag tenant under them and for realisation of the arrear rent etc.

6. In the result, the appeal is allowed in part and the decree is modified to the extent as aforesaid. In the circumstances, there will be no order as to costs.