
(1972) 03 OHC CK 0013

In the Orissa High Court

Case No : Second Appeal No. 263 of 1968

Ratnakar Naik and Others

APPELLANT

Vs

Kedarnath Mohapatra and Others

RESPONDENT

Date of Decision : 22-03-1972

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 100

Orissa Estates Abolition Act, 1951 — Section 39, 8(1), 8A, 8A(4)

Citation : AIR 1972 Ori 252 : (1972) 38 CLT 459

Hon'ble Judges : B.K. Patra, J

Bench : Single Bench

Advocate : K.M. Swain, for the Appellant; B. Mohapatra and S. Jena, for the Respondent

Final Decision : Allowed

Judgement

B.K. Patra, J.—This is an appeal by defendants 1 to 5 against a reversing judgment of the First Additional Subordinate Judge, Cuttack. The dispute relates to 0.27 acre of land covered by plot No. 2532 appertaining to Nijjot Khata No. 821 in village Sisthol and covered by Touzi No. 5605. One Susila Bewa was one of the co-proprietors of the touzi having a four annas share therein, As a co-sharer proprietor, she was in possession of plot No. 2532. Susila's predecessor had mortgaged this plot of land to the plaintiff No. 1. It is the case of the plaintiffs that in satisfaction of the mortgage dues. Susila permanently leased out the land orally to plaintiff No. 1 on the first day of the agricultural year of 1936 (13-4-1936). Subsequently, on 17-8-1936, Bimibadhar who is the brother of Susila and her power-of-attorney holder executed an unregistered deed of lease in favour of plaintiff No. 1. Plaintiff No. 2 is the son of plaintiff No. 1. On 1-5-1954, the touzi was abolished under the provisions of the Orissa Estates Abolition Act, 1951 (Act 1 of 1952) (hereinafter referred to as the Act). It is alleged that after vesting, Susila submitted Ekapadia in the name of plaintiff No. 1 to Anchal authorities and thereafter plaintiff No. 1 was paying rent to the Anchal. Subsequently, there was a proceeding u/s 145, Criminal P. C. in respect

of the disputed land between the plaintiffs and defendants 1 to 5 which terminated in favour of the latter. The plaintiffs, therefore, filed the suit giving rise to this appeal for a declaration of their title to and for recovery of possession of the disputed property. During the pendency of the proceeding u/s 145, Criminal P. C., defendant No. 7 had been appointed as receiver of the suit property. The plaintiffs also prayed for recovery of Rs. 60/- from defendant No. 7. Defendants 1 to 5 contested the suit. Their case is that defendant No. 6 who is the son of Susila and succeeded to her properties as her only heir, sold Susila's four annas share, in the touzi including this disputed land to defendant No. 5 under the registered sale deed dated 8-1-1954. Defendant No. 5 in his turn sold a three pies interest in the touzi along with the entire disputed land to defendant No. 4 under the registered Kabala Ext. C dated 2-3-1954. After abolition of the touzi, defendant No. 4 claiming to be an intermediary to be in possession of the disputed land and contending that u/s 7 of the Act the disputed land must be deemed to have been settled with him filed a claim u/s 8-A of the Act before the Collector for fixing fair rent for the land. Public notice of this claim was given by the Collector in pursuance of which the plaintiffs filed an objection. But, as the objection was filed beyond time, it was rejected. The claim preferred by defendant No. 4 was allowed, fair rent for the land was fixed and defendant No. 4 has since then been paying the rent for the land. It is contended that as the order passed by the Collector u/s 8-A of the Act has not been appealed against and has thus become final. Section 39 of the Act is bar to the maintainability of the present suit. On the merits of the case it was contended by the defendants that the alleged lease of the disputed land in favour of plaintiff No. 1 is not true and that the plaintiffs were never in possession of the disputed property.

2. The trial court dismissed the suit on the finding that the plaintiffs had failed to prove title to the disputed property by virtue of the alleged lease and that they were never in possession thereof. On appeal by the plaintiffs, the lower appellate Court allowed the appeal on the finding that the oral lease set up by the plaintiffs is true that on the basis thereof they have acquired the title of a lessee in respect of the suit property, that the plaintiffs are in possession of the land and consequently are entitled to a declaration of their title to the disputed property. It may be stated here that although the trial Court dismissed the plaintiff's suit in its entirety, in the appeal filed by the plaintiffs they did not implead defendant No. 7 from whom they claimed recovery of Rs. 60/- which he is alleged to have received as receiver of the disputed land. The decree passed by the trial Court dismissing the plaintiff's claim against defendant No. 7 has thus become final. Being aggrieved by the judgment of the lower appellate Court, defendants 1 to 5 have filed this appeal.

3. The appellants assail the findings recorded by the lower appellate Court that the oral lease set up by the plaintiffs is true and that they are in possession of the property. It is pointed out that the lease deed said to have been executed in favour of plaintiff No. 1 by Bimbadhar on behalf of Susila has not been produced, that it has not been shown that after the abolition, the proprietor submitted

Ekapadia in respect of the disputed land in favour of the plaintiffs, that the plaintiffs have not produced the rent receipts given either by Susila or by Anchal and that the rent receipts filed by the plaintiffs on which the lower appellate Court relied are those alleged to have been given by one Jagannath Badu on behalf of Susila and no reliance should have been placed on the same on the ground that it has not been proved that Jagannath had any authority from Susila and also on the ground that Jagannath although alive had not been examined. Besides asserting that the evidence on record fully justifies the findings recorded by the lower appellate Court it is urged on behalf of the respondents that this finding recorded by the final Court of fact is not liable to be assailed in second appeal excepting under exceptional circumstances and that no such circumstances exist in this case. It is also contended that the suit is barred u/s 39 of the Act and is consequently liable to be dismissed without any investigation into the merits of the claim.

4. Law is well settled that in hearing a second appeal, the High Court is entitled to interfere with the conclusion of the lower appellate Court only if it is satisfied that the decision is contrary to law or some usage having the force of law, or that the decision has failed to determine some material issue of law, usage having the force of law or if there is a substantial error or defect in the procedure which may have produced error or defect in the decision. The error or defect referred to above must be one relating to procedure and not one in appreciation of evidence adduced by parties on merits. That is why, the Supreme Court in *R. Ramachandran Ayyar Vs. Ramalingam Chettiar*, has laid down that even if the appreciation made by the lower appellate court is patently erroneous and the finding of fact recorded in consequence is grossly erroneous, that cannot be said to introduce a substantial error or defect in procedure. On the other hand, where onus is wrongly placed on a party, where evidence is discarded on the ground that it is inadmissible, but the High Court is satisfied that it was admissible are some of the instances of error or defect relating to the procedure. A finding which is not supported by evidence will also fall in this category. Having perused the records and the judgment of the lower appellate Court, I am satisfied that no such defect as would warrant interference with the findings of fact exists in this case. On merits, therefore, no case has been made out for interference with the findings of fact.

5. There, however, appears to be considerable force in the appellant's contention that the suit is barred u/s 39 of the Act. It is necessary, therefore, to briefly notice the relevant provisions of the Act. Section 5 deals with the consequences of vesting which is brought about by a notification issued u/s 3 or u/s 3-A of the Act. Clause (a) thereof states that subject to the subsequent provisions of the Chapter (Ch. II), the entire estate shall vest in the State free from all encumbrances. Chapter II comprises of Sections 3 to 13. Section 7 provides inter alia that on and from the date of vesting, lands used for agricultural purposes which were in Khas possession of an Intermediary on the date of such vesting shall notwithstanding anything contained in the Act be deemed to be settled by

the State Government with such Intermediary. Section 8 which deals with continuity of tenures provides that any person who immediately before the date of vesting of an estate in the State Government was in possession of any holding as a tenant under an intermediary shall, on and from the date of vesting, be deemed to be a tenant of the State Government. Section 8-A requires an Intermediary to file his claim in the prescribed manner for settlement of fair and equitable rent in respect of lands which are deemed to be settled with him u/s 7, before the Collector within six months from the date of vesting. On the filing of such claim, the Collector is required to give public notice thereof by beat of drum in the appropriate locality and by placards posted at such conspicuous places as he deems fit, inviting objections from persons interested. Subsection (4) of Section 8-A of the Act reads thus:--

"8 (4) Any person disputing the claim as to the extent or possession of such lands or buildings or structures, as the case may be, may file an objection before the Collector within six months from the date of the public notice under Sub-section (2) of such claim and the Collector shall, prior to the determination of rent under Sections 6, 7 and 8, enquire into the matter in the manner prescribed and pass such order as he deems just and proper".

Section 39 which bars the jurisdiction of Civil Court runs thus:

"39. No suit shall be brought in any Civil Court in respect of any entry in or omission from a Compensation Assessment roll or in respect of any order passed under Chapters II to VI or concerning any matter which is or has already been the subject of any application made or proceeding taken under the said Chapters".

6. As already indicated, defendant No. 4, preferred his claim u/s 8-A before the Collector contending that as an Intermediary he was in possession of the disputed land on the date of vesting and consequently the land should be deemed to be settled with him and praying for fixation of fair rent for the land. Public notice as required under the Act was given and the plaintiffs filed an objection to the claim made by defendant No. 4. But as the objections were filed beyond the period of six months as provided in Sub-section (4) of Section 8-A the objection was rejected and the claim preferred by defendant No. 4 was allowed. Admittedly, the plaintiffs did not prefer any appeal against this order of the Collector with the result that it became final. The question for consideration is whether having regard to the provisions of Section 39 of the Act, the order of the Estates Abolition Collector deciding that defendant No. 4 should be deemed to be an occupancy raiyat in respect of the disputed land on payment of fair and equitable rent can be agitated in a Civil Court. It is argued by Mr. B. Mohapatra appearing for the plaintiff-respondents that Sections 6, 7 and 8-A deal only with properties which vest in the State as a result of the notification u/s 3 or 3-A and which by virtue of the provisions contained in Section 7 are deemed to be settled with the ex-intermediary and that Section 8-A has no application to occupancy tenants under the Ex-Intermediary whose cases are dealt with in Subsection (1)

of Section 8. I am unable to accept this contention. As soon as a claim is preferred u/s 8-A (1) of the Act, a public notice is issued by the Collector inviting objections from persons concerned. Any person who disputes the claim of the ex-Intermediary regarding the possession of the disputed land, is under Sub-section (4) of Section 8 required to file an objection before the Collector within six months from the date of notice. It appears to me that the expression "any person" occurring in Sub-section (4) of Section 8-A includes also a person who claims to be the occupancy tenant in respect of the disputed land. In fact, in this case, the plaintiffs who are claiming themselves to be occupancy tenants did file such an objection which however having been filed late had been rejected. The order which the Collector passed allowing the claim preferred by defendant No. 4, is an order passed under Chapter II of the Act and in terms of Section 39, the jurisdiction of the Civil Court is barred to entertain any suit which virtually questions the correctness of this order passed in favour of defendant No. 4. In *Raghunath Panigrahi v. Udayanath Sahu*. ILR (1969) Cut 214 this precise question came up for consideration but in a different form, The plaintiffs in that suit as intermediaries were in khas possession of a land comprised in a whole Inam village. After the abolition of the estates, the plaintiffs preferred a claim u/s 8-A and after due enquiry it was allowed. Subsequently there was a proceeding u/s 145, Criminal P. C. between the plaintiffs and the defendant in that case which terminated in favour of the latter. The plaintiffs thereafter filed a suit for declaration of their title to and for recovery of possession of the lands from the defendant. The defendant contended that he was an occupancy raiyat of the land under the previous Inamdar and was continuing in possession. The question that was considered was whether the order of the Estates Abolition Collector that the plaintiffs therein ought to be deemed to be occupancy raiyats of the disputed land on payment of fair and equitable rent can be agitated in a Civil Court. It was argued for the defendant that although Section 39 bars a suit, it does not prevent him from putting up the defence that he is an occupancy tenant and that he is not affected by the order passed u/s 8-A of the Act. This contention was rightly negated on the ground that the word "suit" in Section 39 is used in a generic sense and is wide enough to cover the bar of such a defence. It was then contended, as is being done in the present case, that the right of an occupancy tenant u/s 8 is not created for the first time under the Act, that Section 8 merely recognises the existence and continuance of that right and that such a right cannot be taken away by a decision u/s 8-A of the Act. This contention was rejected. If such a contention is to prevail, the very purpose of attaching a finality to orders passed under Sub-section (4) of Section 8-A would be frustrated and it would be directly contrary to the specific provisions of Section 39 barring the jurisdiction of the Civil Court in matters decided under Chapter II. It should be remembered that a decision u/s 8-A is reached after giving due notice of the claim made by an ex-intermediary claiming to be in possession of a certain land. If a person claims to be an occupancy raiyat in respect thereof, he should be sufficiently vigilant and file his objections within the time prescribed. If he sleeps over his right and does not file any objection or if his objection is

rejected and he does not choose to file an appeal against the order, he is to suffer the consequences. It follows therefore that the suit is barred u/s 39 of the Act and is not maintainable.

7. In the result. I would allow this appeal, set aside the judgment and decree passed by the Additional Subordinate Judge and dismiss the suit. In the peculiar circumstances of the case, parties should bear their own costs throughout.