(1969) 07 OHC CK 0038

In the Orissa High Court

Case No : Civil Revision No. 184 of 1966

Sambhu Mallik APPELLANT

Vs

Rusi Mallik and Others RESPONDENT

Date of Decision : 31-07-1969

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 100
Orissa Tenants Relief Act, 1955 — Section 11A(4), 11A(5), 11A(6)

Citation : (1969) 35 CLT 1125

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

Bench : Single Bench

Advocate : G.B. Mohanty, for the Appellant; B. Pr. Patnaik, for the Respondent

Final Decision : Allowed

Judgement

G.K. Misra, C.J.—Rusi Mallik, opposite party No. 1 filed an application before the Collector under the Orissa Tenants Relief Act, Darpan, that he was the bhag tenant in respect of the disputed land, 0.70 acre in area, long since and that the Petitioner Sambhu Mallik was trying to disturb his possession. He accordingly sought necessary relief under the said Act. Sambhu Mallik did not file any written statement, but opposite parties and 3 who are the owners of the land, filed a written statement stating that the land belonged to them and that they transferred the same to Sambhu Mallik in 1960 under a registered sale deed, and before - that Sambhu was in bhag cultivation of the same land. The matter was enquired into; the O.T.R. Collector did not accept the case of Rusi Mallik rejected his application. An appeal against that order was also dismissed by the Additional District Magistrate. Cuttack. A second appeal was carried to the Revenue Divisional Commissioner).under Section 11-A(5) of the Act. The Revenue Divisional Commissioner took a contrary view and accepted the version of Rusi Mallik. He accordingly set aside the confirming judgment and allowed the reliefs claimed by Rusi Mallik. Against this order this revision has been filed u/s 11-A(6).

2. Mr. G.S. Mohanty for the Petitioner contends that the judgment passed by the

Revenue Divisional Commissioner is not a judgment in accordance with law and must be set aside. This argument necessitates a close examination of the powers of the Revenue Divisional Commissioner and the High Court.

3. Section 11-A (5) and (6) run thus:

11-A(5) Any person aggrieved by an appellate order of the Collector of the district may, within thirty days from the date of such appellate order, file a second appeal before the Revenue Divisional Commissioner having jurisdiction.

(6) The High Court may on any question of law raised in an application for revision by any person aggrieved by an order of the Revenue Divisional Commissioner under Sub-section (4) or under Sub-section (5) filed within sixty days from the date of the said order revise the same and confirm, reverse or modify the said order according as the Court thinks proper.

4. It would thus appear that in exercise of his powers in second appeal the Revenue Divisional Commissioner is not restricted by any provision corresponding to Section 100 of the Code of Civil Procedure. The revisional power of the High Court shows that it can interfere only on a question of law, but the same restriction is not applied to the second appellate jurisdiction of the Revenue Divisional Commissioner. The Revenue Divisional Commissioner is, therefore, fully competent to go into questions of fact in second appeal, as he could have done in a first appeal. This is, however, always subject to the paramount consideration that an appellate Court must be cautious in disturbing the findings of the trial Court who had the full opportunity of observing the demeanour of the witnesses.

5. In this case, there is no documentary evidence as to who was in possession as a bhag tenant. The Petitioner examined 6 witnesses including himself and opposite party No. 3. Opposite party No. 1 examined 8 witnesses. Their evidence was closely scrutinised, and discussed by the trial Court. The first appellate Court did not find sufficient reason to differ from the trial Court''s conclusions. When the Revenue Divisional Commissioner interfered with such concurrent findings of fact, it was his duty to thoroughly examine the evidence of all the 14 witnesses, notice the intrinsic improbabilities in their evidence, and then come to a conclusion whether the finding is acceptable or not. Unfortunately, the judgment under revision suffers from the infirmity that it does not at all refer to the oral evidence though it has referred to certain circumstances some of which are also based on errors of record. For instance, it is stated in the judgment that the present village of the Petitioner is at a distance of 12 miles from the village in which the disputed land is situated. Mr. Patnaik for opposite party No. 1 frankly stated that there is no such evidence and the Revenue Divisional Commissioner should not have taken judicial notice of such facts which are not based on records. There is also nothing in the order-sheet to show on what basis the Commissioner took such judicial notice. Thus, though u/s 11-A(5). of the Orissa Tenants Relief Act the Revenue Divisional Commissioner has ample powers to

reexamine facts, he did not exercise the jurisdiction vested in him. On the contrary he has reversed the concurrent findings of fact without going into the evidence. Such a judgment is not a judgment in accordance with law. The High Court in exercise of its power under Sub-section (6) of Section 11-A can correct such errors of law.

6. In the result, the civil revision is allowed and the case is remanded to the Revenue Divisional Commissioner, for disposal in accordance with law in the light of the observations made above. There will be no order as to costs.

