
(1965) 02 OHC CK 0010
In the Orissa High Court
Case No : Second Appeal No. 303 of 1963

Sarojini Devi

APPELLANT

Vs

Bikram Nanda and Others

RESPONDENT

Date of Decision : 02-02-1965

Acts Referred:

City of Nagpur Corporation Rules — Rule 10
English Rent Restriction Act, 1920 — Section 12(1)
Mussalman Wakf Validating Act, 1913 — Section 3
Orissa Tenancy Act, 1913 — Section 3(23)
Orissa Tenants Relief Act, 1955 — Section 10, 2, 2(1), 3, 9
Partition Act, 1893 — Section 4

Citation : (1965) 31 CLT 608

Hon'ble Judges : Misra, J;Barman, J

Bench : Division Bench

Advocate : R.N. Misra and R.C. Patnaik, for the Appellant; R.K. Mohapatra and S.C. Mohapatra, for the Respondent

Final Decision : Dismissed

Judgement

Barman, J.—The point which gives rise to this appeal is Are the contesting Defendants 1 and 2 statutory tenants created by the Orissa Tenants Relief Act 1955? The definition of tenant u/s 2(1)(j) of the Act so far as material is this tenant means a person who under the system generally known as Bhag, Sanja or Karta 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.

Exception - The following persons shall not be deemed to be tenants within the meaning of this definition (1) a member of the landlord's family.

2. Are Defendants 1 and 2, who are the separated first cousins of the landlord Plaintiff's husband, members of the landlord's family so as to be excluded from the definition of tenant within the meaning of the Act? The point arose in the

circumstances hereinafter stated.

3. One Banamali Nanda, the common ancestor had three sons-Balakrishna, Ananta and Bhagirathi. Sasibhusan, Radha and Bikram (Defendants Nos. 3, 2 and 1 respectively) are sons of Ananta and Defendant No. 4 Gadadhar and Defendant No. 5 Sadananda are sons of Bhagirathi. Balakrishna had a son Chaitana who is untraced since many years. The Plaintiff is Chaitan's wife.

4. The Plaintiff's case so far as material is this the said three branches of the family were separate and the Kha schedule lands were allotted to the share of the Plaintiff's husband. She was in possession of the same through bhag tenants. The Gn. schedule property was not divided and she was in joint possession of the same with other co sharers. It is said that the Plaintiff had let, out Kha schedule lands to Sasibhusan Defendant No. 3 and Gadadhar Defendant No. 4. But as their cultivation was not satisfactory they voluntarily quitted the same. Thereafter, in 1960, the Plaintiff let out the same to one Lokanath Bhoi who deposed as P.W. 6. Defendants 1 and 2 who are separated first cousins of the Plaintiff's husband and had no connection with the lands, dispossessed the said Lokanath Bhoi from certain plots and forcibly took possession of other lands. The Plaintiff started a criminal case in which Defendant No. 1 was sentenced to pay fine. Defendants 1 and 2 did not quit the suit lands. Thereupon the Plaintiff filed this suit for recovery of possession and mesne profits. Defendants 3 to 5 supported the Plaintiff's case. The suit was contested by the said two separated first cousins of the Plaintiff, Defendants 1 and.

5. The contesting Defendants case is this the entire family property was divided. Defendants 1 and 2 having ceased to be members of the Plaintiff landlord's family are tenants under the Plaintiff in respect of all her lands in dispute the Defendants do not come within the exception to the definition of tenant. The Defendants contend that the dispute between the contesting parties herein is not cognizable by a civil Court by virtue of the provisions of the Act.

6. The trial court dismissed the Plaintiff's suit on the finding that all the family properties were divided between the three branches of Balakrishna Ananta and Bhagirathi and that no property remained joint that the contesting Defendants 1 and 2 are in possession of the suit property as tenants under the Plaintiff and that in view of this relationship of landlord and tenant between the Plaintiff and Defendants 1 and 2, the Civil Court cannot give any relief to the Plaintiff by virtue of the provisions of Sections 9 and 10 of the Orissa Tenants Relief Act. This decision was confirmed in appeal by the learned lower appellate court. Hence this second appeal.

7. The question is Are Defendants 1 and 2, the separated cousins of the Plaintiff's husband, members of the Plaintiff landlord's family? The word family has not been defined in the Act. It has been interpreted and construed to have different connotations in the context and surrounding circumstances in which the word has been used in each particular statute.

8. The word family in Section 12 Sub-section (1)(g) of the English Rent Restriction Act, 1920 includes brothers and sisters. The primary meaning of the word family was children, but that meaning is susceptible of a wider meaning according to the context in which it is used, and the Legislature used the word family to introduce a wide and flexible term. Thus in *Price v. Gould and Ors.* 143 Law Times Reports 333. Wright J. had to decide whether the word family under the said section of the English Rent Restriction Act includes brothers and sisters. The learned Judge found as a fact, that the brothers and sisters who were residing with the deceased at the time of her death. It has been said in a number of equity cases that the word family is a popular, loose and flexible expression, and not a technical term.

9. Thus in *Snow v. Teed* 9 EC 622. Equity Cases 622 it was held that the word family must receive its natural meaning in the ordinary acceptance of the word family which would not, strictly speaking, be confined to statutory next of kin. It could be extended beyond not merely children but even beyond the statutory next of kin.

10. Sir George Jossel M.R. in *Pigg v. Clarke* 3 CD 672 held that the word family was in that particular case limited to children the children of the testator. But he said now every word which has more than one meaning has a primary meaning and if it has a primary meaning, you want a context to find another.

11. It is thus in different contexts that the word family has been used in different statutes in this country also for instance, the word family was intended to be used u/s 3(a) Mussalman Wakf Validating Act 1913 in a very large and extensive sense. The policy of the said Act was to validate the creation of a wakf in perpetuity in favour of persons who happened to be the members of the family according to the popular acceptance of that term. The word family as occurs in Section 4 of the Partition Act has been interpreted to mean persons under one head or management and it is in that sense that the expression has been used therein a person does not become by reason of inheritance alone, ipso facto a member of the family to whose property he succeeds. A Full Bench of the Calcutta High Court in *Khironde Chunder Ghosal and Anr. v. Saroda Prosad Mitra* 12 CLJ 525 held that the word family is incapable of an exhaustive definition and that it should be read in a liberal sense. There is nothing in the Partition Act to support the suggestion that the term family was intended to be used in a very narrow and restricted sense namely, a body of persons who I can trace their descent from a common ancestor. It is in this sense that a widowed daughter residing in her father's family and not receiving any maintenance from her husband family can be regarded as a member of the undivided family of the father for the purpose of Section 4.

12. So, also, the Supreme Court in *Corporation of the City of Nagpur Vs. The Nagpur Handloom Cloth Market Co. Ltd.*, interpreted the City of Nagpur Corporation Act, 1948 read with Rule 10(a) there under which provided. Where more than one family having separate sources of income, occupy separate

portions of the same building or range of building each of such portion shall be deemed a building under these rules and assessed according to its gross annual letting value as determined in accordance with Rule. Their Lordships held that the expression family has, according to the context in which it occurs, a variable connotation it does not in the setting of the rules postulate the existence of relationship either of blood or by marriage between the persons residing in the tenement even a single person may be regarded as a family, and a master and servant would also be so regarded. In that particular context, their Lordships held that the expression family in the context in which it occurs, means no more than a person or a group of persons.

13. Thus, the meaning of family in a particular statute must be determined with reference to the context in which it has been used blood or affinity is not necessarily, in all cases, the pre-condition to constitute a family. Technically the word family may be taken to mean the collective body of persons who live in one house and under one head or manager and includes within its fold a household consisting of parents children and servants and, as the case may be, lodgers or boarders. Popularly, however, the term indicates persons descended from one common progenitor and having a common lineage.

14. In the present case, the rival contentions on which the controversy arises as to the interpretation of the word family in the Exception (1) to Section 2(1)(j) of the Orissa Tenants Relief Act, 1955, are these The Plaintiff's point is that the Defendants 1 and 2 are members of the landlord's family having descended from the common ancestor Banamali Nanda. What the Plaintiff lays emphasis is the descent from one common ancestor and common lineage. On the other hand, the point of the contesting Defendants 1 and 2 is that family means a collective body of persons who live in one house and under one head or manager, for example, the children under their father as such Defendants 1 and 2 being separated first cousins are not members of the Plaintiff landlord's family.

15. What is the context in which tenant has been defined subject to the Exceptions as laid down in the Orissa Tenants Relief Act, 1955? It appears from the "preamble" that it is a beneficial piece of legislation by which certain benefits were conferred on a particular class of tenants, created by the statute. The preamble reads thus:

Whereas subsequent to the passing of the Orissa Estates Abolition Act, 1951 and pending further legislation relating to land reforms 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 other privileges in the manner hereinafter appearing.

16. Then Section 3(I) of the Act provides for protection of the tenants from

eviction and maximum rent thus-

Notwithstanding anything in any law, contract or usage or in any decree or order of any Court but subject to the provisions of this Act-

(a) no tenant in lawful cultivation of any land on the 1st day of July, 1954, or at any time thereafter shall be liable to be "evicted from such land by the land-lord.

(b) no such tenant shall be bound to pay more than one-fourth of the gross produce of the land or the value thereof or have value of one-fourth of the estimated produce as rent to the landlord.

17. Thus, a statutory tenant under the Orissa Tenants Relief Act has certain special privileges and protection there under. He is a creature of the statute. The Exception (1) excluding, a member of the landlord's family is to be strictly construed according to the settled principles of interpretation of statutes. The effect of an excepting or qualifying proviso, according to the ordinary rules of construction, is to except out of the preceding portion of the enactment or to qualify something enacted therein, which but for the proviso "would be within it, and such a proviso cannot be construed as enlarging the scope of an enactment when it can be fairly and properly construed without attributing to it that effect.

18. Keeping in view these basic principles the object of the Orissa Tenants Relief Act as also the context and surrounding circumstances all as discussed above, we are of opinion that Defendants 1 and 2, as separated cousins of the Plaintiff's husband, are not members of the landlord's family. Indeed they do not come within such category of persons as live in one house and under one head or manager, such as children under the father.

19. The Plaintiff's argument against this view is that even without this Exception, a Mitakshara son cannot be a tenant under his father landlord. The reason is that the father and son have joint proprietary interest in ancestral properties. The son cannot thus be a tenant under himself. In our opinion, there is no difficulty in reconciling the position with the view that we have taken. Undoubtedly an undivided Mitakshara son having joint proprietary interest with his father does not come within the definition of tenant. But the separated members of a divided family-though related by blood or affinity having descended from one common progenitor-have no such joint proprietary interest as undivided sons. The divided members of a family do not fall within the Exception, that is to say, they are not members of the landlord's family and therefore not excluded from being tenant created by the Act. Thus the Exception must be limited to members of the family having joint proprietary interest. This meets the Plaintiff's argument.

20. We find support for our view in a decision of this Court by Acting Chief Justice Mohapatra (as he then was) in Chamea Panigrahi and Ors. v. Malli alias Fula pandani and Anr. 25 C.L.T. 477 80 where it was contended on behalf of the Plaintiff that the Plaintiff is a member of the family of the Defendants as such the Defendants cannot be taken to be tenants under the Orissa Tenants Relief Act.

But this contention was not accepted by the learned Acting Chief Justice particularly in view of the definite case of the Plaintiff that there was a completed partition between the Plaintiff's father and the father of Defendant No. 1 in that case that since the date of partition they case to be members of a joint family. We notice that the case was one of a disrupted joint family. That, however, does not affect the underlying principle on which the case was decided.

21. We must however, make it clear that the Exception to the definition of tenant, excluding a member of the landlord's family, has been interpreted in this case in the manner it has been done in the particular context and surrounding circumstance in which the Legislature intended to pass the Act for the benefit of a particular class of tenants, created by statute. It is significant that a similar exception excluding members of the landlord's family has also been made in definition of tenant under the Orissa Tenants Protection Act, 1948. There also Section 2(g) provides (so far as material) tenant means a person who but shall not include-

(1) a member of that person's family or the preamble to this Act also shows that the object was to provide for the temporary protection of certain cases of tenants. This goes to show that the Legislature intended to create certain statutory tenants purporting to confer on them certain privileges which were to be restricted only to certain class of persons coming within the restricted definition of tenant given in both the said beneficial Acts. There is no such exception in the definition of tenant in the Orissa Tenancy Act, 1913 where Section 3(23) provides tenant means a person who holds land under another person and is or but for a special contract would be, liable to pay rent for that land to that person.

This confirms the view taken by us in interpreting the word tenant in the Orissa Tenants Relief Act in the manner that we have done as discussed above.

22. In this view of the case, the decision of the Court below dismissing the Plaintiff's suit is confirmed. This second appeal is dismissed. As to costs having regard to the nature of the point involved, each party is to bear own costs throughout.

Misra, J.

23. I agree.