
(2019) 01 OHC CK 0090
In the Orissa High Court
Case No : R.S.A. No.232 Of 2007

Sidheswar Panigrahi

APPELLANT

Vs

State Of Orissa And Others

RESPONDENT

Date of Decision : 21-01-2019

Acts Referred:

Orissa Offices Of Village Police (Abolition) Act, 1964 — Section 3(g), 6, 7(g)

Citation : (2019) 01 OHC CK 0090

Hon'ble Judges : Dr. A. K. Rath, J

Bench : Single Bench

Advocate : Budhiram Das, Swayambhu Mishra

Final Decision : Dismissed

Judgement

DR. A.K. RATH, J

1. Plaintiff no.1 is the appellant against a confirming judgment in a suit for declaration of title, confirmation of possession, in the alternative recovery of possession and permanent injunction.

2. The case of the plaintiffs was that their grandfather, Harihar Panigrahi, was appointed as Gountia of the suit village by the ex-ruler. Gountia patta

was issued in his favour in respect of the suit village and land. He excavated the tank and used the water of the tank for irrigation of his land. He was

doing pisciculture. After death of Harihar, his son, Iswar, father of the plaintiffs, became the Gountia of the suit village. He made development of the

tank and spent huge amount by incurring loan. He was in possession till his death. The plaintiffs are in possession of the tank from the time of their

grandfather for more than 60 years without any intervention and as such perfected title by way of adverse possession. The defendants have no

semblance of right, title and interest over the same. In the 4th settlement, the suit land has been wrongly recorded in the name of the State under

Rakhit Anabadi. During the current settlement, they filed Objection Case Nos.936/1993, 43/84 to record the suit land in their names. The A.S.O.

erroneously rejected the said claim. Thereafter, the Tahasildar, Sonepur initiated Encroachment Case No.188 of 1995. With this factual scenario, they

instituted the suit seeking the reliefs mentioned supra.

3. The defendant no.1 filed a written statement denying the assertions made in the plaint. The specific case of the defendant no.1 was that the suit

land is a Government land. It was recorded in the name of Government of Orissa under Rakhit Khata. After abolition of Bhogra system, the tank

vested in the State. Iswar, father of the plaintiffs, had surrendered the Bhogra land by filing petition. The same was accepted by the authorized

officer. In the Bhogra proceeding, an area of Ac.12.942 dec. was settled by the Collector in favour of Iswar excluding the tank. Iswar did not prefer

any appeal against the said order. Excavation of tank has been denied by the defendants. The State Government being the owner of the tank, the

same has been recorded in the name of the State Government in the 4th settlement. The plaintiff no.2 forcibly encroached upon an area Ac.1.800 dec.

out of plot no.118, for which, encroachment case was initiated against him. He was evicted from the encroached area. The plaintiffs are not in

possession of the tank. The plaintiffs have not been challenged the recording of the tank in the name of the State Government within the prescribed

period of limitation and as such the suit is barred by limitation. Though the defendant no.2 filed a written statement, but subsequently he was set

exparte.

4. Stemming on the pleadings of the parties, learned trial court struck six issues. Parties led evidence, oral and documentary. On an analysis of the

pleadings and evidence, learned trial court came to hold that the 4th settlement ROR stands in the name of the State of Orissa. The plaintiffs have not

challenged the same. Therefore, the suit is barred by limitation. The suit property was originally Bhogra land. The property belonged to the State. The

ancestor of the plaintiffs had excavated the tank. The same is a public property. Held so, it dismissed the suit. The unsuccessful plaintiffs filed R.F.A.

No.28 of 2005 before the learned Additional District Judge, Sonepur, which was

eventually dismissed.

5. The second appeal was admitted on the following substantial questions of law.

â??(a) Whether the possession of the plaintiff-appellant over the suit tank which was excavated by him would become adverse after abolition of Bhogra ?

(b) Whether the suit for declaration of title would be barred by limitation where the R.O.R. in relation to the suit land was not challenged within the prescribed period

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6. Heard Mr. Budhiram Das, learned Advocate, on behalf of Mr. N.C. Pati, learned Advocate for the appellant and Mr. Swayambhu Mishra, learned

A.S.C. for the respondent no.1.

7. Mr. Das, learned Advocate for the appellant, submitted that Harihar Panigrahi, grandfather of the plaintiffs, was Gountia of the village. He

excavated the tank by incurring loan and used the water of the tank for irrigation. He was in possession of the tank. After his death, Iswar, father of

the plaintiffs, was in possession. Thereafter, the plaintiffs are in possession of the tank peacefully, continuously and with the hostile animus to the

defendants for more than the statutory period and as such perfected title by way of adverse possession. He further submitted that the court below fell

into patent error of law in holding that the suit is barred by limitation, since the same was not instituted during the prescribed period of limitation after

publication of ROR. The instant is the suit for declaration of title and other reliefs. The suit is not barred by limitation.

8. Per contra, Mr. Mishra, learned A.S.C. for the respondent no.1, submitted that the plaintiffs are not in possession of the suit land after abolition of

Bhogra system. The land vested in the State. Exts.A and B, i.e., the copies of the work order and agreement executed by the plaintiff no.2, show that

the work order issued in favour of the plaintiff no.2 to make improvement of the tank.

9. The question crops up for consideration as to whether the Gounti land is the personal property of Gountia or he ceases to have the right to hold the

same on the abolition of Orissa Offices of Village Police (Abolition) Act, 1964 ? Taking a cue from State of Orissa vs. Prafulla Kumar Pradhan

(dead) through L.Rs., 2018 SCC OnLine Ori.188, this Court held:

â??10. In Paramananda Pradhan (supra), the question arose before a Full Bench

of this Court as to whether Gounti-raiyati lands in the former State of Bamra are the

personal property of the Gountia or he ceases to have the right to hold the same on abolition of the village offices. The further question arose as to whether the Civil

Court has jurisdiction to entertain the suit for partition of the Gounti-raiyati lands, which have been settled under Sec. 6 of the Act. On an in-depth analysis of the

Revenue Laws prevailing in ex-State Bamra and the Act, the Full Bench held that the Gountia used to possess the vacant holdings of the raiyats and to remain in

charge of those holdings until they were settled with other raiyats. He was in possession of those lands by virtue of or as incidental to his office. Such lands were

called the Gounti-raiyati lands during the tenure of office of the Gountia. After abolition of the village offices, the Gountia shall cease to have the right to hold, the

Gounti-raiyati lands as provided under Section 3(g) of the Act. Gounti-raiyati lands in the ex-State of Bamra were not the personal property of the Gountia. It was

further held that the Gounti-raiyati lands in the ex-State of Bamra were not the personal property of Gountia, but he was in charge of those lands by virtue of or as

incidental to his office and according to the provisions of Sec.3(g) of the Act, he ceases to have the right to hold those lands. It was further held that the Civil Court

has no jurisdiction to entertain a suit for partition of the Gounti-raiyati lands.

11. In Paramananda Pradhan (supra), the Full Bench distinguished earlier Full Bench decision of this Court in the case of Gajaraj Sahu v. State of Orissa, AIR 1971

Orissa 1 wherein it was held that Gounti-raiyati means raiyati lands held by the Gountia during his tenure of office and that Gounti-raiyati lands are, therefore, raiyati

lands. The lands involved in that case were the Gounti-raiyati lands of the district of Sambalpur governed by the Central Provinces Land Revenue Act and the

question for consideration was whether such lands were raiyati lands and were freely transferable. It was held that the decision must, therefore, be read in the light of

the facts of that case and is no authority on the question whether the Gounti-raiyati lands of the former State of Bamra governed by the provisions of Act 10 of 1963

are the personal property of the Gountia. The Full Bench overruled the Division Bench decision in the case of Prafulla Kumar Pradhan (supra).â??

10. In State of Orissa and others vs. Sankarsan Singh Nina and others, 2017 SCC OnLine Ori.644, the plaintiffs instituted the suit for a direction to the

defendants to issue patta recognizing their rights over the suit tank, declaration of fishery rights and permanent injunction. According to the plaintiffs,

their ancestors were appointed as Thikadar of the village, which continued till abolition of the Thikadari system in the ex-Patna State. The suit tank

was excavated by their ancestor in the year 1902. He was in possession of the same. The question arose the rights of Thikadars in respect of Bhogra

lands attached to the Thikadari right. This Court held:

13. In the case of Gopaleswar Dharua (supra), the questions arose before the Full Bench of this Court for consideration as to (i) What was the nature of right the

Thekadar had in the Bhogra lands during the tenure of the settlement from 1.4.1936 till 31.3.1950 ?

(ii) Has section 7(g) of the Act any application to Bhogra lands of the Thekadars in the ex-State of Bolangir ?

14. On an in-depth analysis of the law prevailing in the ex-State of Bolangir and referring to the provisions of the Patna State Revenue Act, 1940, this Court held that a

Thekadar in the ex-State of Bolangir was not a tenant and was a mere tenure-holder. He had rights and obligations as mentioned in the Patta and the Kabuliyat during

the currency of the settlement. He had no title in Bhogra lands. He had no right of alienation. There was no right of succession except during the currency of the

settlement. He was liable to eviction on various grounds during the currency of the settlement. During the period for which the settlement was valid the Thekadar had

a precarious right. At the close of the settlement he had no right. All that was prescribed was that until the next settlement he would continue to collect the land

revenue and discharge the duties. The legal position that existed in the ex-State of Bolangir prior to the coming into force of the Act on 3.3.1950 was that the

Thekadar had no right, title and interest in the Bhogra lands except that he was in possession thereof towards the remuneration for management of the village. The

Bhogra lands attached to the Thekadari right are not the private properties of the Ruler. They belong to the State. Towards remuneration for the management of the

village the Bhogra lands are given during the period of settlement to the Thekadar. It was further held that the petitioner in the said case cannot have any title in any

Bhogra lands other than those which were settled with him on rayati basis. The Thekadars in the ex-State of Bolangir had a precarious right in the Bhogra lands. They

were in enjoyment thereof during the currency of the settlement having no right, title and interest therein and were evictable under certain conditions. After the expiry

of the tenure they had no rights to continue in the lands.â??

11. In Bhogra proceeding, an area of Ac.12.942 dec. of land excluding the tank was settled in favour of Iswar Panigrahi, father of the plaintiffs, by the

Collector. The same had not been challenged. The order attained its finality.

12. The suit land has been recorded in the name of the Government of Orissa in the 4th settlement. Plaintiffs assert title by way of adverse

possession. Burden of proof lies on the person who claims to acquire title of the land by way of adverse possession. Adverse possession is not a pure

question of law, but a blended one of fact and law. In the celebrated judgment, the Privy Council in the Secretary of State v. Debendra Lal Khan, AIR

1934 Privy Council 23 held that the classical requirement of adverse possession is that the possession should be nec vi nec clam nec precario. Their

Lordships quoted with approval the decision in the case of Radhamoni Devi v. The Collector of Khulna and others, Indian Appeals 1900 Vol. XXVII

at page 140 that â??the possession required must be adequate in continuity, in publicity, and in extent to shew that it is possession adverse to the

competitorâ??.

13. Mere possession of the suit land for long time is not suffice to hold that the plaintiffs have perfected title by way of adverse possession, unless the

classical requirements of adverse possession nec vi, nec clam, nec precario are pleaded and proved.

14. In *Karnataka Board of Wakf vs. Govt. of India and others*, (2004) 10 SCC 779, the apex Court held:

In the eye of the law, an owner would be deemed to be in possession of a property so long as there is no intrusion. Non-use of the property by the owner even for a

long time won't affect his title. But the position will be altered when another person takes possession of the property and asserts a right over it. Adverse possession

is a hostile possession by clearly asserting hostile title in denial of the title of the true owner. It is a well-settled principle that a party claiming adverse possession

must prove that his possession is "*nec vi, nec clam, nec precario*", that is, peaceful, open and continuous. The possession must be adequate in continuity, in publicity and in extent to show that their possession is adverse to the true owner. It must start with a wrongful disposition of the rightful owner and be actual, visible,

exclusive, hostile and continued over the statutory period.

The court further observed that plea of adverse possession is not a pure question of law but a blended one of fact and law. Therefore, a person who claims adverse possession should show: (a) on what date he came into possession, (b) what was the nature of his possession, (c) whether the factum of possession was known to

the other party, (d) how long his possession has continued, and (e) his possession was open and undisturbed. A person pleading adverse possession has no

equities in his favour. Since he is trying to defeat the rights of the true owner, it is for him to clearly plead and establish all facts necessary to establish his adverse

possession.â?? (emphasis laid)

15. The B.D.O., Sonapur issued work order in favour of plaintiff no.2 for renovation of the tank on 18.5.99, Ext.A. The plaintiff no.2 entered into an

agreement vide Ext.B. After renovation, he has received payment. Learned appellate court held that P.W.3 in his cross-examination stated that the

tank is the only tank in the suit village. The villagers used the tank for taking bath and also take the water of the tank. It is a public tank. He had no

knowledge that if Iswar, father of the plaintiffs, made development of the tank as Chairman of the Block. P.W.4 had stated that the tank was the only

tank in the village and the villagers were using the water of the tank for irrigation purpose. On analysis of the pleadings and evidence on record, it

negatived the claim of the plaintiffs. It further held that neither the plaintiffs, nor their ancestors were in possession of the tank as exclusive owner

thereof. It is a public tank and is being used by the public. Plaintiffs admitted that the plaintiff no.2 had done the developmental and renovation work in

the tank as leader of the village committee after obtaining required work order from the Government. Ext.10, the Gountia patta, shows that Harihar

Panigrahi would construct bandha kata and will renovate the land for the development of the village. There is no such terms and conditions in the said

patta that he would be entitled to exercise his own right, title and interest over the bandha kata. As per the terms and conditions of the patta, Ext.10,

Harihar Panigrahi was to construct bandha kata for the development of the village. There is no provision in the land laws conferring status of

occupancy on Harihar Panigrahi in respect of the tank. The excavation of the tank by the ancestor of the plaintiffs over the Government land as the

Gountia of the village does not confer any right of occupancy over the tank under the land laws as per the Sonapur Bhumi Bidhi. The tank was

excavated over the Government land. The plaintiffs have no right, title and interest over the same. The tank was excavated by the ancestor of the

plaintiffs over the Government land for the development of the village. These are essentially the finding of facts. There is no perversity in the findings.

The date of entry into the suit land has not been mentioned. Both the courts held that the plaintiffs have not perfected title by way of adverse

possession. The element of hostile animus is absent.

16. Article 58 of the Limitation Act provides to obtain any other declaration. The period of limitation is three years, when the right to sue first accrues.

The plaintiffs had instituted the suit within three years from accrual of cause of action. The suit is not barred by limitation. The substantial questions of

law have been answered accordingly.

17. In the wake of aforesaid, the appeal, sans merit, deserves dismissal. Accordingly, the same is dismissed. There shall be no order as to costs.

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