

(1973) 09 OHC CK 0009
In the Orissa High Court
Case No : Second Appeal No. 497 of 1969

Smt. Annapurna Dei and Others

APPELLANT

Vs

Akbar Patel and Others

RESPONDENT

Date of Decision : 03-09-1973

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 100, 96
Transfer of Property Act, 1882 — Section 118

Citation : AIR 1974 Ori 162 : (1973) 39 CLT 1196

Hon'ble Judges : S.K. Ray, J

Bench : Single Bench

Advocate : S.C. Mohapatra, U.S. Misra and J.K. Tripathy, for the Appellant; B.H. Mohanty, for the Respondent

Final Decision : Allowed

Judgement

S.K. Ray, J.—The defendants are the appellants. This appeal is directed against the reversing decision of the lower Appellate Court.

2. Originally, Arjun Patel, the ancestor of the plaintiffs was the owner of plot Nos. 1076 and 1097 measuring 27 decimals in aggregate, 9 decimals being comprised in plot No. 1076 and 18 decimals comprised in plot No. 1097. He was recorded in respect of the same in record of rights of 1926-27 settlement of Ex. Bamra State. Defendant No. 1 was the owner of plot No. 722 having an area of 54 decimals and of plot No. 790 having an area of 3.15 decimals. Plot No. 790 is Goda land and plot No. 722 is paddy land. These two plots 722 and 790 are the suit lands set out in Schedule A of the plaint. In 1939, Arjun Patel exchanged his two plots Nos. 1076 and 1077 with the defendant No. 1's two plots Nos. 722 and 790. In accordance with the Revenue Rules of the Ex-State of Bamra, this exchange was sanctioned by the Revenue Authority in Rev. Misc. Case No. 430/M of 1939-40 and the relevant order in that proceeding is dated 13-4-1940. Following this sanction, plots 1076 and 1097 were taken off from Arjun Patel holding and included in the holding of defendant No. 1. Similarly plots 722 and

790 were removed from the holding of the defendant No. 1 and included in the holding of Arjun Patel. Thereafter Arjun Patel possessed defendant No. 1's Plots Nos. 722 and 790 and defendant No. 1 possessed plaintiff's plots Nos. 1076 and 1097. Arjun Patel and the plaintiffs constituted a joint family, till about 1949-50 when, in a family partition, plot 722 was divided into three shares and plot 790 which had been converted into an orchard by them, was kept joint. Defendant No. 1 by a registered deed of partition divided plots 1076 and 1097 amongst his three sons who have obtained separate mutation in respect of their shares. Thus the defendants dealt with plots 1076 and 1097 as their own and the plaintiff dealt with plots 722 and 790 as their own. Subsequently, in the early part of 1966 when the settlement operations were going on the defendants for the first time on the basis of the original record of rights of 1926-27 settlement claimed the suit lands as their own before the settlement authorities. That claim was refuted and was not countenanced by those authorities. Thereafter, the defendants, forcibly trespassed upon the suit lands, that is to say, plots Nos. 722 and 790 and sowed paddy on 28-8-1966 which gave rise to the cause of action for the present suit. The plaintiffs, on these allegations, have prayed for declaration of title and confirmation of possession or in the alternative for recovery of possession.

3. The defence case is that defendant No. 1 entered into a transaction of exchange of his plot No. 722 with the two plots, 1076 and 1097 of Arjun Patel and the said exchange was to materialise after obtaining State approval. Plot No. 790 was never the subject-matter of this exchange transaction. In order to get State sanction, Arjun Patel got a petition drafted and obtained signature of defendant No. 1 thereon, who signed it blindly and filed it before Revenue Authority. Rev. Misc. Case No. 430/M of 1939-40 was registered on the basis of that petition. Arjun fraudulently incorporated plot 790 in the said petition, and order of approval to the alleged exchange of plot 790, if any, was obtained by illegal means and by connivance of the Revenue staff. The defendants have all along been in possession of plot 790 and have grown an orchard thereon after fencing it.

4. Plaintiff's suit in regard to plot No. 722 has been decreed by both the courts below on admission of the defendants. So the decree with regard to that plot is final and is no longer under challenge in this Second Appeal. With regard to plot No. 790, the trial Court dismissed the plaintiff's suit, but the lower Appellate Court has decreed it, and accordingly, the defendants have appealed to this Court. The sole question, therefore, relates to the decision of the lower Appellate Court with regard to plot No. 790 only.

5. The trial Court did not accept the evidence of possession regarding plot No. 790 adduced by the plaintiffs. He held that the defendants were all through in possession of this plot. He further held that a joint petition was filed before S. D. O., Kuchinda, by Arjun Patel and defendant No. 1 to sanction the exchange of two plots 722 and 790 belonging to defendant No. 1 with plots 1076 and 1097 of

Arjun Patel. There was no fraud committed by Arjun Patel in incorporating plot 790 in that petition. Before order of approval was passed there was due proclamation and objections were invited but no objections were forthcoming. Subsequent to the order of approval, the patwari, after due enquiry, prepared ferastas and the revenue authority directed correction of the revenue records according to the order sanctioning exchange. He disbelieved the defence story that defendant No. 1 after discovering fraud played by Arjun in introducing plot No. 790 in the joint petition for sanction, filed an objection petition upon which the S. D. O. dropped the sanction proceeding. He also held that despite sanction order the exchange is not valid because there was no delivery of possession, though, according to him, no registered deed is necessary for effecting the exchange as the property (plot No. 790) was valued less than Rs. 100/-.

6. The lower Appellate Court held that there was a valid exchange as pleaded by the plaintiffs and that appropriate authorities had sanctioned such an exchange. Thus, the exchange of plot No. 790 being accompanied by delivery of possession, was valid and operative in law and the plaintiffs derived title over the same. He was of the view that the Transfer of Property Act did not operate in Bamra and that there was nothing in Bamra Revenue Rules indicating that the exchange of land should be reduced into writing and registered. Thus title, as already stated above, passed by mere delivery of possession of the land, by virtue of this exchange, continuously from 1939-40 till they were dispossessed about 2 years prior to the suit, by accepting the plaintiff's evidence of possession. He, therefore, reversed the decision of the trial Court with regard to this plot and decreed the suit.

7. The learned counsel for the appellants attacks the finding of possession of the lower appellate Court on the ground that he has not considered the evidence of all the witnesses of possession examined by the plaintiffs. It is argued that since his was going to be a reversing decision, it was his duty to substantially traverse various crucial pieces of evidence and circumstances relied upon by the trial Court in rendering his contrary finding. It is also contended that the lower appellate Court committed an error in finding that Arjun Patel had acquired title to plot 790 under the impugned transaction of exchange by mere delivery of possession, because the value of the property was about Rs. 10/- or Rs. 12/-, while, in fact, there was no such reliable evidence on record.

8. The lower appellate Court has dealt with the question of possession in para 6 of his judgment. At the commencement of that paragraph he has stated as follows :

"I have carefully gone through the pleading and evidence adduced by both sides and have no hesitation to hold that the appellants were in possession of the disputed plot No. 790 by virtue of the exchange in the year 1939-40 till they were dispossessed nearly two years prior to the institution of the original suit. The learned Munsif has discarded the evidence of the witnesses on the side of the plaintiffs regarding the possession of the disputed plot No. 790 on flimsy

grounds and minor discrepancies such as the number of trees and kind of trees standing thereon."

Then he proceeds to discuss defence evidence of possession and discards the same. Except casually referring to P, W. 1 only out of 4 witnesses of possession examined by the plaintiffs, he has not noticed the testimony of the other P. Ws. Further, he has not adverted to the weighty circumstances which have been greatly relied upon by the trial Court, at all. This indicates an error in his approach to the case. He should have satisfied himself, in the first instance, by discussing plaintiff's evidence of possession before committing to the finding extracted above. Whatever that be, he appears to have ultimately revised his first conclusion in para 7 of his judgment, which runs as follows :--

"If the same stand is applied in appreciating the evidence on either side regarding the possession of disputed plot No. 790, the evidence on either side becomes equally unsatisfactory. Under these circumstances it is open to presume that the possession of the disputed plot No. 790 was with the appellants on the basis of the principle possession follows title."

It is a well-known principle that if the finding of the trial Court on a question of fact is reasonable and reflects a possible view on the evidence on record, the appellate Court should not lightly reverse it merely because a different view is equally possible on the basis of the printed record, specially when the trial Court had the advantage of witnessing the demeanour of the witnesses. Apart from failing to analyse the evidence of possession adduced by the plaintiffs fully and giving some inconsistent findings by adopting a wrong approach to the case, he has not kept in mind the aforesaid principle.

9. On the question of title, the lower appellate Court has proceeded under a confusion as to the correct law to be applied. In saying that Section 118 of the Transfer of Property Act does not apply, he is obviously wrong. It appears from the Report on the Administration of Bamra State for the year 1944-45 which has been published by authority, a copy of which was produced before me, that Transfer of Property Act has been in operation. In Bamra State since the year 1945, Appendix-II to this Report contains a list of Acts and Ordinances in force in Bamra State and the dates from which those Acts have been respectively brought into force in that State. Item 15 of that Appendix II shows that Transfer of Property Act was brought into force in Bamra State with effect from August 1935. Therefore, the case of exchange should have been determined in the background of the law contained in the Transfer of Property Act, and not according to the Bamra Revenue Rules, a copy of which was also produced before me. Section 118 of the Transfer of Property Act provides that a transfer of property in completion of an exchange can be made only in manner provided for transfer of such property by sale. The manner provided for transfer of such property by sale "obviously refers to the manner for effecting a sale as provided by Section 54 of Transfer of Property Act and not to Rule 5 of Bamra Revenue Rules, which provides that all sales irrespective of the valuation of the property

conveyed shall be by registered deed. The argument of the learned counsel for the appellants that Rule 5 of Bamra Rules applied cannot be accepted. Section 54 of the Transfer of Property Act provides that sale in the case of tangible immovable property, of a value less than one hundred rupees can be made either by a registered instrument or by delivery of the property. Therefore, since the exchange has not been effected by registered, deed it was the duty of the courts below to determine the valuation of the property exchanged. The trial Court has valued plot No. 790 at Rs. 10/- to Rs. 12/- on the basis of a stray statement of P. W. 1 that though presently the valuation would be Rs. 1100/- to Rs. 1200/-, it was Rs. 10/- or Rs. 12/- at the time of exchange. The lower appellate Court appears to have found that the plot is valued at less than Rs. 100/-. He does not disclose the basis of such conclusion of his and the learned counsel for the appellants has, therefore, rightly contended that such a finding is without evidence. He should have considered, having regard to the area of plot No. 790, which is A.3.15, and present valuation of Rs. 1100/- to Rs. 1200/- as admitted by P. W. 1, whether the stray statement, without any corroborative document, of P. W. 1 who would be aged about 24 years at the time of the impugned exchange, is acceptable. Therefore, his bald finding that plot 790 was less than Rs. 100/- in value cannot be accepted. His final conclusion that the transaction of exchange was in accordance with law so as to pass title thereunder cannot be upheld.

10. Connected with the question of title is the defence plea of fraud which is comprised in issue No. 4 which runs as follows :

"Whether Arjun Patel practised fraud on Chandu Parida in Rev. Misc. Case No, 430/M of 1939-40?"

If this plea is upheld then the necessary conclusion would be that plot 790 was not exchanged and therefore Arjun did not acquire title to it. The trial Court negatived this plea but the lower appellate Court has completely omitted to render any finding on this issue.

11. For the aforesaid reasons, it is necessary to send the case back to the lower appellate Court for reconsidering the question of possession, passing of title and the plea of fraud and for fresh disposal.

12. Another point has been raised by the learned counsel for the appellants that the sanction order passed by Revenue Authority is not legal as the authority to sanction is the Ruling Chief alone. He has placed reliance on Rule 31 of Bamra Revenue Rules and the definition of "The State Authority" set out at the very commencement of the Rules. "The State Authority" has been defined to mean the Ruling Chief or any other officer, who has been legally empowered. In the present case, the so called sanction has admittedly been given by the Revenue Authority. Such a sanction would be void only if the Revenue Authority had not been so empowered by the Ruler. Such a question, as to whether the Revenue Authority had been empowered by the Ruler or not, involves a question of fact

and it was never raised. On the contrary, it appears from the pleadings of the parties and from filing of a joint petition for approval of exchange, even in regard to the undisputed plot 722, before the Revenue Authority indicates that the general stand of the appellants then was that the Revenue Authority was authorised to approve exchanges. The presumption derivable from the fact that the revenue Authority dealt with the matter of sanction and passed an order and from the conduct of the parties, is that the relevant power must have been delegated to the Revenue Authority by the Ruler. It is too late to raise that question for the first time here, which is a mixed question of fact and law. The appellants have produced some documents here by way of additional evidence showing that the Ruling Chief himself had given sanction order in certain cases. That, however, proves nothing. The Ruling Chief, who was the repositior of the power of sanction can authorise a subordinate authority to exercise that power but by such delegation, he, does not denude himself of his powers. In such cases, both the Ruling Chief and the delegated authority will have con-current jurisdiction to sanction any transaction of exchange. Further, those documents filed here by way of additional evidence do not on their fate indicate that the approval order was passed by the Ruler of Bamra, as such. In view of the aforesaid features, these documents tendered by way of additional evidence, would not resolve the question. This contention is, therefore, rejected. For the purpose of the present case it has to be assumed that the sanction order by the Revenue Authority was a valid order and was passed in exercise of the powers delegated to him by the Ruling Chief in that behalf.

The petition for additional evidence also does not satisfy the requirements of Order 41, Rule 27, Civil P. C. and is accordingly rejected.

13. In the result, therefore, the judgment and decree of the lower appellate Court are set aside and the case is remitted to the lower appellate Court who shall dispose of the appeal in accordance with law and in accordance with the observations made and conclusions recorded above. It may be observed that if the lower appellate Court feels that the evidence as to the valuation of the property (plot 790) at the time of the impugned exchange is insufficient to base a finding on, it will be open to him to frame an issue and send it to the trial Court for a finding and on receipt of that finding to dispose of the appeal before him.

The appeal is, thus, allowed and remanded. Costs will abide the result.