

(1998) 09 OHC CK 0001
In the Orissa High Court
Case No : First Appeal No. 268 of 1980

Smt. Rebati Dei		APPELLANT
	Vs	
Kunja Bihari Mohapatra and Others		RESPONDENT

Date of Decision : 08-09-1998

Acts Referred:

Orissa Estates Abolition Act, 1951 — Section 6, 7

Citation : (1998) 2 OLR 543

Hon'ble Judges : D.M. Patnaik, J

Bench : Single Bench

Advocate : B. Patnaik, for the Appellant; B.B. Patnaik, for the Respondent

Final Decision : Allowed

Judgement

D.M. Patnaik, J.—Plaintiff's suit for declaration of title, confirmation of possession and/or in the alternative for recovery of possession and injunction in respect of disputed plot No. 1759 measuring Ac. 0.70 decimals and plot No. 1758 measuring Ac. 0.13 decimals appertaining to Touzi No. 2900 of mouja Kantaballavpur in the district of Jagatsinghpur having been dismissed, she is in appeal.

Her case is, one Bhagaban Mohapatra, an ex-intermediary was the original owner of the land. By virtue of the provisions under the Orissa Estates Abolition Act, 1951 (for short, the "OEA Act") the land in dispute having been vested with the State Government, subsequently said Bhagaban Mohapatra on an application under Sections 6 and 7 of the said Act got the land settled in his name by order of the O.E.A. Collector dated 3.9.1959. On 22.3.1966 while said Bhagaban was possessing the land in his own right, title and interest, he transferred the same to one Mayadhar Mohapatra by way of registered sale deed and Mayadhar in his turn having such right and possession transferred the land in favour of the plaintiff by registered sale deed dated 25.1.1975.

It is the case of the plaintiff that since the defendants who are co-sharers of the

family of the plaintiff laid a claim in respect of the disputed land and threatened dispossession she was constrained to file the suit for reliefs claimed.

2. The defendants who are admittedly the co-sharers in their pleadings stated that Bhagaban Mohapatra surreptitiously got the land recorded in his name before the Collector by practising fraud by suppressing notices etc. In the alternative, they claim that even assuming the settlement in favour of Bhagaban was a valid one yet his other co-sharers such as, Nilamani and Natabara being in joint possession of the land in dispute, such settlement in the name of Bhagaban alone would also ensure to their benefit and therefore notwithstanding the fact of such settlement, the defendants have got their right, title and interest also in the property in question.

3. With these pleadings the lower Court framed the following issues:

ISSUES

- (1) Is the suit maintainable as laid?
- (2) Has the plaintiff any cause of action against the defendants?
- (3) Is the suit barred by limitation?
- (4) Is the order of settlement in favour of Bhagaban Mohapatra under Sections 5, 6 and 7 of the O.E.A. Act is valid and binding?
- (5) Is the settlement ensure to the benefit of the defendants?
- (6) Has the plaintiff acquired valid title and possession in respect of the suit property by virtue of the sale deed executed in her favour by Mayadhar Mohapatra?
- (7) To what relief is the plaintiff entitled of which issues Nos. 4, 5 and 6 being inter-linked they were taken up together. The finding of the lower Court is that the plaintiff failed to prove the previous partition among the co-sharers i.e. Bhagaban, Nilamani and Natabar as well as the exclusive possession of the land by Bhagaban. It also held that the defendants had no notice in the O.E.A. proceeding for which they could not object to such settlement of the disputed land in the name of Bhagaban. With a finding that Natabar and Nilamani were the co-sharers, the lower Court held that the question of Bhagaban himself having exclusive title to the property did not arise and, therefore, it dismissed the suit in its entirety.

3. Heard Mr. B. Patnaik, learned counsel for the plaintiff-appellant and Mr. B. B. Patnaik, learned counsel for the respondent-defendants.

After hearing the learned counsel for both the sides the point for decision that arises is whether the plaintiff's suit should have been dismissed in its entirety.

It is the admitted case of the parties that Nilamani, Natabar and Bhagaban were joint co-owner intermediaries. On going through the records and the judgment of

the lower Court, I find that the plaintiff has failed to prove Bhagaban's exclusive possession as on the date of vesting or even lately when he made the application for being settled under Sections 6 and 7 of the Act. There is no material to that effect. The very admitted position that as on the date of vesting the disputed land belonged to the joint owners, as mentioned above, obviously the petition which was filed by Bhagaban for settlement under Sections 6 and 7 of the Act, in the absence of any material that he was exclusively possessing the same as on that day, the application for such settlement could be deemed to have been made on behalf of other co-sharers also. As per the provision of Section 7 proviso of the O.E.A. Act if the intermediary interest is also an interest of the co-sharers, any settlement thereof shall ensure to the benefit of all the co-sharers. This position is not disputed by the learned counsel for the appellant. It is however submitted by Mr. B. Patnaik that the lower Court committed error in dismissing the suit in its entirety since admittedly, according to the finding of the lower Court, Bhagaban was one of the co-sharers in respect of the land in question and, therefore, the purchaser from Bhagaban and the subsequent purchaser i.e. the plaintiff have successively stepped into the undivided interest of the co-sharer title-holder in respect of his limited interest in the property i.e. 1/3rd. I accept the contention of Mr. Patnaik on this point that it was an error on the part of the lower Court to dismiss the whole suit. With such admitted position that Bhagaban was a co-sharer and all the co-sharers are the joint owners in respect of the land in question that itself would not deprive Bhagaban of his right, title and interest at the stage of vesting of the property in question. Therefore, what legally passed to the vendees of Bhagaban was only 1/3rd undivided interest in the disputed property which he is legally entitled to transfer with the only exception that the transferee can only seek a relief for partition to enjoy the property. Therefore, the judgment of the lower Court is liable to be set aside to that extent.

4. Admittedly the sale-deeds in favour of Mayadhar by Bhagaban nor by Mayadhar in favour of the plaintiff has been challenged in the present case. Since they are not challenged, they are held to be valid transfers in favour of the transferees.

5. In the result, the appeal is allowed. The lower Court judgment is set aside to the extent that the plaintiff is entitled to get declaration in respect of the 1/3rd interest in the disputed land which she is entitled to possess exclusively only after a partition by metes and bounds which can be done by amicable arrangement and in case such amicable arrangement fails, by enforcing the same by way of a separate suit for partition. In the peculiar facts and circumstances of the case, the parties are to bear their own cost.