
(2008) 06 OHC CK 0034
In the Orissa High Court
Case No : First Appeal No. 138 of 1995

Sri Jayasingh Mohapatra and Others	Vs	APPELLANT
Sri Saroj Kumar Mohapatra and Others		RESPONDENT

Date of Decision : 30-06-2008

Acts Referred:

Land Acquisition Act, 1894 — Section 30
Orissa Land Reforms Act, 1960 — Section 19

Citation : (2008) CLT 717 Supp

Hon'ble Judges : Sanju Panda, J

Bench : Single Bench

Advocate : Biswanath Rath, B. Senapati, S.N. Mohapatra, K.R. Mohapatra, S. Ghosh, J. Rath, P.K. Panda, B.N. Mishra and N. Ratho, for the Appellant; B. Brahmachari, U.S. Pattnaik and S.K. Ray, for the Respondent

Final Decision : Allowed

Judgement

Sanju Panda, J.—This First Appeal is directed against the order dated 3.4.1995 passed by the learned Civil Judge (Senior Division), Kendrapara in L.A. Case No. 3 of 1992 in a reference u/s 30 of the Land Acquisition Act (hereinafter referred to as "the Act").

2. The facts of the case are as follows:

The Appellants are the opposite parties in the Court below. The present Respondents-claimants filed an objection before the Land Acquisition Collector as the land appertaining to Sabik Plot No. 854, 710, 875 and 981 under Khata No. 140 in Mouza Rajanagar were acquired for construction of a bridge over river Hansua for which Gazette notification was published on 16.12.1988. The claimants in their objection stated that the ROR in respect of the aforesaid plots stands in the name of one Dibyasingha Mohapatra, who was the father of the claimants. But in the remarks column of the ROR, it was mentioned that the land was under forcible possession of one Jayasingha Mohapatra and others. Since the Sale deed was in the name of Dibyasingha Mohapatra, the claimants being

successor in interest were entitled to the compensation for the said land. The present Appellants also filed a claim application stating therein that the acquired land was the joint family property of Mani Mohapatra, who was the common ancestor. The property was purchased by them in the name of his son Dibyasingha Mohapatra. But the consideration money was paid by Mani Mohapatra. In the family arrangement, the disputed properties were allotted to the share of Jayasingha Mohapatra who was the son of Mani Mohapatra. Therefore, being the successor in interest of Jayasingha, they were entitled to the compensation. Both the applications were referred to the civil Court u/s 30 of the Act for determination as to whom the compensation or any part thereof was payable.

3. In support of their respective claims, both the parties adduced oral as well as documentary evidences. The Respondent-claimants examined three witnesses and P.W.3 was Saroj Mohapatra, who was one of the claimants in the Court below. The Appellants also examined eight witnesses out of whom O.P. Ws. 8 to 12 are the claimants. The Respondents exhibited a sale deed dated 12.9.1994 which has been marked as Ext.1 and certified copy of the ROR of village Rajnagar in respect of Khata No. 140 and the order passed by the Commissioner of Land Records and Settlement in R.P. Case No. 4577 of 1992 which has been marked as Ext.7. The Appellants filed Identification signature of Dibyasingha Mohapatra in acknowledgement, Ext.1 (A) Kachha Farda, Ext.1 (A/1) signature of Dibyasingha Mohapatra in registered sale deed dated 22.6.1983, Ext.C ROR, Ext.G Possession Certificate, etc.

4. The learned Civil Judge (Senior Division) after analyzing the evidence adduced by the parties held that as the sale deed stands in the name of Dibyasingha Mohapatra, he was the title holder of the disputed property and his son Saroj Mohapatra and his two brothers, the present Respondents succeed to such property. Ext. A, the Kachha Farda, i.e., family arrangement/settlement, was discarded by the Court below on the ground that it was inadmissible in evidence in view of the bar u/s 19 of the O.L.R. Act, as the said document was of the year 1967. The partition took place in pursuance of the said document after the O.L.R. Act came into force in 1965.

5. The learned Counsel appearing for the Appellants submitted that the parties belong to joint Hindu family. They have adduced evidence that their common ancestor Mani Mohapatra had Ac.100.00 of land. Though the acquired property was in the name of Dibyasingha Mohapatra, in the family settlement which took place in the year 1964 was written in a paper in the year 1967 allotted to the share of Jayasingha. Dibyasingha Mohapatra has put his signature in the said document. As the document was only written in the year 1967 regarding the partition took place in the year 1964, the said document was a genuine one and accordingly parties possessed the land as per the share allotted in the partition in the year 1964. Therefore, the finding of the Court below is illegal and it is nobody's case that in order to defraud or avoid the ceiling proceeding under the

O.L.R. Act, the said document has been created. Therefore, the finding of the Court below that the said document is inadmissible in evidence in view of the bar u/s 19 of the O.L.R. Act is required to be set aside, as the said Act is inapplicable to the present case since both the parties have admitted that they belong to a joint Hindu family.

6. The learned Counsel appearing for the Respondents submits that the order passed by the Court below is just and reasonable, need not be interfered with.

7. Considering the above submission of the parties, this Court is to determine whether the finding of the Court below is sustainable in law in view of the settled position of law regarding the family arrangement/settlement. Family arrangement or settlement, as it is sometimes termed, generally meets with the approval of the Court and the Court always leans in favour of a transaction relating to any such arrangement which ensures peace and goodwill among the family members. This does not rest on any special rule of Hindu Law but flows from general principle and policy of law. It is governed by special equity particular to itself and where the terms are fair, taking into consideration the circumstances of the case, the Court makes every effort to recognize and sustain it. Though conflict of legal claims in praesentior in futuro is generally recorded as a condition for the validity of a family arrangement, it is not necessarily so. Even the bona fide dispute present or possible, which may not involve future claims, will suffice. Thus, for instance, members of a joint family may, to maintain peace or to bring about the harmony in the family, enter into such a family arrangement. It is not necessary that the arrangement should be amongst all member of the family arrayed one against the other. The prime factor is that it should be in the interest of the family. The Court while deciding the rights of the parties under a family arrangement or a claim to upset such an arrangement considers what in the broadest view of the matter is must in the interest of the family and has regard to considerations which, in dealing with transactions between the persons not members of the family. A family arrangement can be such as the Court would uphold though there were no rights in dispute and if sufficient motive for the arrangement was proved, the Court would not consider adequacy of the consideration. The apex Court has generally taken a broad view of the concept of family arrangement and leaned heavily in favour of upholding any such arrangement. (Reference may. be made to Ram Charan Das Vs. Girjanandini Devi and Others, The Court should uphold such arrangement if it was entered into to allay disputes existing or apprehended and even any dispute or difference apart if it was entered into bona fide to maintain peace or to bring about harmony in the family. If it is shown that the purported arrangement was from the inception not intended to be acted on then it would be really no arrangement at all and cannot bind the parties nor would any family arrangement be given effect to as against a party or those claiming through him if it was brought about by undue influence or coercion or fraud practised upon him. It may be noted that any such arrangement is not the creation of an interest. In such an arrangement, ordinarily each party takes a share or interest

in the property by virtue of the independent title which is admitted to that extent by the other parties. But every party who takes benefit under it need not necessarily be shown to have, under the law, a claim to a share in the property. All that is necessary to be shown is that the parties are related to each other in some way and have a possible claim or even a semblance of a claim or some other ground. The expression "family" in the context of family arrangement is not to be understood in a narrow sense of being a group of persons who are recognized in law as having a right of succession or having a claim to a share in the property in dispute. If the arrangement is between near relations, it can also be arrived at orally and its terms may be recorded in writing as a memorandum of what was agreed upon between the parties. The document which contains the arrangement does not require registration unless, by itself it creates interest in movable property. A memorandum is usually prepared as a record of what had been agreed upon so that there can be no hazy notions about it in future. It is only when the parties reduce the family arrangement in writing with the purpose of using that writing as a proof of what they had arranged, and, where the arrangement is brought about by the document as such, that document would require registration. If the said document was not registered, it can be used for a collateral purpose of showing the nature and character of possession of the parties in pursuance of an arrangement. A family arrangement can, as a matter of law, be implied from a long course of dealing between the parties. The position of law from the above is clear. It appears that the trial Court has not considered Ext.A from that angle. The document shows that the parties discussed and allotted shares in the year 1964 and recorded such arrangement only in the year 1967 in its proper transaction.

8. After going through Ext.A and its recitals, it appears that the said document was prepared in the year 1967 wherein the parties have recorded the family arrangement which took place in the year 1964 and Dibysingha Mohapatra was also a party to the said document and by virtue of such arrangement, properties are possessed by the parties, so also Jayasingha Mohapatra, Mani Mohapatra, Lala Mohapatra and Bhimasingha Mohapatra. As this is a land acquisition matter, this Court remands the matter again to the Court below to determine the rights of the parties keeping in mind that Ext.A which shows the family arrangement is admissible and genuine and parties are continuing to be in possession of property as per the said arrangement and as the proceeding is not under the O.L.R. Act, the said document was not barred u/s 19 of the O.L.R. Act.

9. With the above finding the appeal is allowed. The Appellants are entitled to compensation for acquisition under the Act.