

(1968) 06 OHC CK 0010
In the Orissa High Court
Case No : First Appeal No. 48 of 1964

Sri Sita Ramachandra Mahaprabhu	Vs	APPELLANT
Madano Maharana		RESPONDENT

Date of Decision : 21-06-1968

Acts Referred:

Evidence Act, 1872 — Section 45, 47, 64, 67
Orissa Tenants Relief Act, 1955 — Section 10, 11, 2

Citation : AIR 1968 Ori 217 : (1968) 34 CLT 993

Hon'ble Judges : G.K. Misra, J; B.K. Patra, J

Bench : Division Bench

Advocate : P.V. Ramdas, D. Mohanty and M.V. Narasinha Murty, for the Appellant; H.G. Panda and S. Mohapatra, for the Respondent

Final Decision : Dismissed

Judgement

Patra, J.—This is an appeal by an unsuccessful plaintiff in a suit for declaration that the defendant-respondent is not a tenant within the meaning of the Orissa Tenants Relief Act, 1955 in respect of 19.85 acres of land situated in Bhat Kuarda village of Chatrapur Taluk and for a permanent injunction restraining the defendant from entering upon the suit land or in the alternative for recovery of possession of the land. The disputed land originally belonged to the Ankaraboyina family who on 25-4-42 executed a sale deed (Ext. 3) in respect of the properties in favour of Chatti Venkata Swamy. Venkata Swamy and his brother Narasimhulu installed the plaintiff deity Sri Sita Ramachandra Mahaprabhu in their house on 15-2-48 and on 10-7-48 executed a registered Trust deed (Ext. 5) in favour of the deity inter alia making a gift of Rs. 42,000 to the deity to be utilised for its Seba Puja and other purposes.

On 18-2-51 both these brothers executed a registered deed gift (Ext. 4) in favour of the deity in respect of the disputed lands. Venkata Swamy died some time in the year 1956 leaving behind his two sons Krishna Murthy and Balakrushnama. The suit giving rise to this appeal was filed by Balakrishnama as

the trustee of the deity. Plaintiff's case as set down in the plaint is that about six months before the death of Venkata Swamy (i. e. in 1956), the latter had appointed the defendant to manage the suit lands on behalf of the deity and cultivate the same and make over the yield to the deity after deducting there from the expenses of cultivation. Accordingly the defendant cultivated the land in 1956 and paid 18 cart-loads of paddy to Venkata Swamy. Similarly for the year 1957 he delivered 13 cart-loads of paddy to the plaintiff's trustee. The defendants cultivated the land in the year 1958 and in Magh 1959 told the trustee of the plaintiff deity that the Karji of Bhat Kumarda was not allowing the paddy to be taken to Berhampur unless the trustee gave an application to the Karji.

Plaintiff's trustee went to Bhat Kumarda and signed on a paper written in Oriya which defendant gave him. Being not conversant with the Oriya language he could not know what was written there. The defendant then delivered 11 cart-loads of paddy, being the dues relating to the year 1958. Taking a similar paper signed by the plaintiff's trustee the defendant gave 18 cartloads of paddy to him in 1960 relating to the year 1959 and 12 cart-loads of paddy in the year 1961 relating to the year 1960. Regarding the dues of the year 1961 payable in Magh 1962, the defendant deposited an amount of Rs. 976.49 in the Court of the O. T. R. Collector, Chatrapur in M. P. No. 17/62. After notice was served on the plaintiff's trustee he filed objection that there had never been any relationship of landlord and tenant between the plaintiff and defendant. The O. T. R. Collector passed an order closing the case and directing that the plaintiff's trustee might start a separata proceeding if he so desired (Ext. 7).

The plaintiff on enquiry learnt that the three papers on which the defendant obtained the signature of plaintiffs trustee for the years 1959, 1960 and 1981 were receipts in which the defendant was described as a bhag tenant under the plaintiff. It is alleged that these receipts were obtained from the plaintiffs trustee by fraud and misrepresentation and are not binding on the plaintiff. It is asserted that the defendant was never a bhag tenant in respect of the disputed land and that he was only a manager in respect of the disputed lands and liable to be evicted therefrom.

2. In the written statement filed by the defendant he contended that since the time Chatti Venkata Swamy purchased the disputed lands in 1942 he has been cultivating the lands as a tenant under the Chatti family and has been continuing to do so even after the lands were endowed to the deity. He denied the plaint allegation that he was ever appointed to look after the lands as manager of the deity. The plaint allegation that in the years 1959, 1960 and 1961 the defendant obtained the signature of the plaintiff's trustee on certain papers by misrepresentation of the contents thereof was also denied and it was asserted that the plaintiff's trustee had received the Raj bhag for those years and passed those receipts which were scribed under his direction. As the defendant has been regularly paying the rent and is a tenant in respect of the suit land he is not

liable to be evicted therefrom. It was further alleged that the suit is bad for non-joinder of all the trustees of the deity. It was lastly contended that the civil Court has no jurisdiction to try the suit.

3. The learned Additional Subordinate Judge, Berhampur held following the decision in *Magiti Sasamal Vs. Pandab Bissoi*, that he has jurisdiction to decide the dispute between the parties as to whether the defendant was a tenant in respect of the disputed land. On the merits of the case he held that the defendant is a tenant under the plaintiff and that being so, the Civil Court has no jurisdiction to order his ejection from the suit lands. He also held that under the terms of the trust deed (Ext. 5), after the death of Chatti Venkata Swamy and his brother Narasimhulu the trustees of the deity were Balakrushnama, son of Venkata Swamy and the widow of Narasimhulu. The widow of Narasimhulu being alive and having not joined as a plaintiff in this suit, the suit brought by Balakrushnama alone as the trustee is not maintainable. In the result he passed a decree dismissing the suit with costs. Hence this appeal by the plaintiff.

4. In view of the decision of the Supreme Court in *Magiti Sasamal Vs. Pandab Bissoi*, that a civil Court has jurisdiction to decide the dispute as to whether there is relationship of landlord and tenant between the parties, the learned Subordinate Judge was right in embarking on such an enquiry. The main question therefore for consideration in this appeal is whether the defendant is a tenant under the plaintiff. The case of the defendant is that he was a tenant in respect of the dispute land ever since Venkata Swamy purchased the same in 1942. To disprove this case the plaintiff examined P. W. 2, who says that during the years 1954, 1955 and 1956 he had managed the suit lands by cultivating the same and making over the produce to the deity, after deducting there from the expenses of cultivation. Admittedly there is nothing in writing to show that he worked as such manager. He belongs to village Mohuda which is about 30 miles from Bhat Kumarda where the disputed lands are situated.

It is therefore highly unlikely that a man living at such a long distance from Bhat Kumarda would be managing the lands in the latter village. Obviously to get over this improbability he said that he was also managing the lands of his maternal uncle situated at Sahapur village which is about 2 miles from Bhat Kumarda. It is not explained why and under what circumstances the maternal uncle himself could not manage his lands and entrusted them for management to P. W. 2. P. W. 2 does not even know in which direction of the village Bhat Kumarda the disputed lands are situated. According to him all the suit lands are canal irrigated although the plaint schedule itself shows that 7 acres of land are dry lands. We would presently show with reference to some of the documents exhibited in this case that defendant himself was cultivating the disputed land during the years 1954 to 1956.

In these circumstances we are unable to place any reliance on the evidence of P. W. 2. P. W. 4 has deposed that the defendant is cultivating the suit lands as manager of the deity and that prior to its P. W. 2 was looking after the lands as

manager and that prior to P. W. 2 one Dina Gouda was cultivating the lands. Dina Gouda has not been examined in this case. P. W. 4 admits that he has never gone over the suit lands. The case of the plaintiff is that the defendant used to manage the suit lands and deliver the produce thereof after deducting therefrom the cost of cultivation. There is nothing in the plaint to show that the defendant was to receive any remuneration for managing these lands on behalf of the deity. Obviously realising this unlikely position it is for the first time stated by the plaintiff's trustee (P. W. 3) in Court that the defendant was to receive 4 bharans of paddy towards his remuneration. P. W. 3 Balakrushnama stated that about six months prior to the death of his father he entrusted to the latter the management of the suit land.

But he admits that the defendant never produced any accounts of expenses of cultivation. If the defendant was really the manager and was under the terms of management required to deduct the cultivation expenses from the total yield it is difficult to believe that he would not maintain an account of the expenses of cultivation and submit the same for scrutiny by the plaintiff. As against the evidence let in on the plaintiff's side the defendant has produced several documents to prove his case that he was a tenant under the plaintiff. Ext. D is 8 post card dated 6-1-46 written by Chatti Narasimhulu to one Tarini Pradhan wherein defendant Madan Moharana is referred to as the ryot of Bhat Kumarda. D. W. & the village Karanam has identified the signature in Ext. D. Exts. C to C-6 are post cards addressed to the defendant by Chatti Nara-simhulu during the period from 20-5-48 to 12-7-51 and Exts. C-7, C-S, C-12 are post cards dated 6-5-52, 24-1-55 and 28-1-55 respectively addressed to the defendant by Chatti Venkata Swamy.

C-10 is a post card from Chatti Balakrushnama (son of Venkata Swamy) to defendant and C-11 is a post card from Chatti Ammayi Amma (plaintiffs aunt) to the defendant. These signatures on the post cards have been duly proved and they support the defendants case that he was cultivating the disputed lands since long before 1956 when according to the plaintiff he was first inducted to the land as a manager. In Ext. C-12 dated 28-1-55 Venkata Swamy refers to defendant as a ryot. Ext. C-11 dated 25-2-59 addressed by Chatti Ammayi Amma to defendant is most revealing. This appears to be a reply to defendant's letter dated 21-2-59. This letter has not been produced by the plaintiff. But from the contents of Ext. C-11 it appears that the defendant had demanded that the sons of Venkata Swamy should go to village Bhat Kumarda and give a receipt and take the paddy from the defendant. Chatti Amma takes exception to this conduct of the defendant, and reminds the defendant that the lands are deity's lands and as such why the defendant was attempting to bring himself within the purview of the land laws (obviously referring to O. T. R. Act). She questions whether the defendant had ever executed any muchalika in her favour. The question of executing muchalika arises only in the case of tenant and not in the case of a manager. She finally concludes that she is prepared to grant receipts provided the paddy is brought and delivered.

5. All these letters considerably support the defendant's case. It was however contended in the Court below that these letters were not properly proved and as such were inadmissible in evidence. The learned Subordinate Judge held that the signatures of the senders of these post cards have been duly proved and in the absence of any evidence or circumstances to show that the senders had put their signatures on blank post cards which have been subsequently filed up, the letters must be held to have been duly proved. In arriving at this conclusion he relied on a decision reported in AIR 1957 AP 584, *Sivaramakrishnayya v. Kasi Viswanadham*, where it was held inter alia that if a person denies that he has written a letter which contains his signature, then surely he must prove what he alleges, i.e., that the letter was got up on a blank piece of paper containing his signature, as also the circumstances in which he happened to put his signature on such a piece of paper, and that where a man's signature appears in a document at the place where the executant of such a document would normally sign, then the signature may prima facie be taken as having been put in token of execution.

This proposition appears to us to have been too broadly stated and we are unable to endorse this view specially in view of the contradictory line of reasoning adopted in the decisions reported in *Ramlakhan Singh Vs. Gog Singh*, and *Mohammed Yusuf and Another Vs. D. and Another*, . That a letter bears the signatures of the sender may be a strong piece of evidence in favour of the person who contends it is genuine, and in the majority of the cases very slight evidence may be necessary to prove that the letter was signed after it was written. It does not, however, follow from this that the mere proof of signature ipso facto proves the contents of the document. It would equally not be correct to say that execution of a document cannot in any case be proved except by direct evidence. To take an illustration, what is to happen if everybody who can speak about the execution of a document is dead and the document is not less than 30 years old? In such cases the person who wants to rely on the document can do nothing except to adduce proof either of the signature or the handwriting of the person who wrote the documents. In somewhat similar circumstances, the Supreme Court in the case reported in *Mobarik Ali Ahmed Vs. The State of Bombay*, observed as follows ;--

"The proof of the genuineness of a document is proof of the authorship of the document *Mobarik Ali Ahmed Vs. The State of Bombay*, and is proof of a fact like that of any other fact. The evidence relating thereto may be direct or circumstantial. It may consist of direct evidence of a person who saw the document being written or the signature being affixed. It may be proof of the handwriting of the contents, or of the signature, by one of the modes provided in Sections 45 and 47 of the Evidence Act. It may also be proved by internal evidence afforded by the contents of the documents. This last mode of proof by the contents may be of considerable value where the disputed document purports to be a link in a chain of correspondence, some links in which are proved to the satisfaction of the Court. In such a situation the person who is the

recipient of the document, be it either a letter or a telegram, would be in a reasonably good position both with reference to his prior knowledge of the writing or the signature of the alleged sender, limited though it may be, as also his knowledge of the subject matter of the chain of correspondence, to speak to its authorship. In an appropriate case the Court may also be in a position to judge whether the document constitutes a genuine link in the chain of correspondence and thus to determine its authorship".

6. So far as the present case is concerned D. W. 2 Antaryami Patnaik has deposed that letters Exts. C to C-12 are in the handwriting of Chaitnya Dutta, the gumasta of Venkataswamy. These post cards bear the postal seals of the relevant time when they were posted. Although Chaitnya Dutta had attended the Court as a witness of the plaintiff on some occasions, he was, for reasons best known to the plaintiff, not examined as a witness. A reference to some of these letters had been made in Para 10 (c) of the plaint. There is no specific denial in the plaint that these letters are not genuine. On the other hand it was there contended that these letters far from showing the existence of relationship of landlord and tenant between the plaintiff and the defendant only go to establish that the defendant was a manager and agent of the plaintiff. The plaintiff-trustee and who is none else than the son of Venkataswamy examined as P. W. 3 does not say that the signatures appearing in these various letters are not genuine.

All that he says is that he is not aware of the letters and the contents thereof. We will presently refer to two other documents namely Exts. B and B-I which conclusively establish the existence of relationship of landlord and tenant between the plaintiff and defendant. No doubt Exts. B and B-I are of the years 1959 and 1960 i.e., later in point of time than the post cards Ext. C series. But the recitals in these two documents being consistent with the recitals in the relevant letters in Ext. C series, they considerably support the defendant's case that Ext. C series letters are genuine. In view of the aforesaid evidence and circumstance of the case we accept the finding of the learned Subordinate Judge that the letters Ext. C series have been duly proved and are genuine.

7. Ext. J is an application in English dated 16-5-49 sent by Chatti Venkata Swamy to the Assistant Civil Supply Officer, Berhampur requesting for a way permit to bring his rajbhag paddy of 12 cart-loads from Bhat Kumarda village. It is admitted by the parties that besides the disputed lands Venkata Swamy had no other lands in Bhat Kumarda. There can therefore be no doubt that the rajbhag paddy referred to in Ext. J relates to the paddy from the disputed land. There appears to us to be considerable force in the argument advanced by Mr. Panda on behalf of the respondent that rajbhag always refers to what a landlord receives from his tenant and that the receipt of the rajbhag paddy from the disputed lands indicated that the defendant was the tenant and Venkata Swamy was the landlord in respect of the disputed lands.

8. The most important documents in this case are Ext. B dated 5-4-59 and Ext. B-I dated 2-3-60 which have been already referred to. Ext. B is a receipt signed by

the plaintiff's trustee Chatti Balakrishnama and his brother Chatti Krishna Murty acknowledging having received 11 cart loads of paddy from the defendant towards rent for the disputed lands for fasli 1369. This receipt is proved by Antaryami Patnaik (D. W. 2) who had scribed it Ext. B receipt dated 5-4-59 granted by plaintiff's trustee Balakrishnama to the defendant in token of having received the bhag rent for the fasli 1368 in respect of the disputed land. This receipt also had been scribed by D. W. 2 who proved the same. The plaintiff's trustee who was examined as P. W. 3 admitted his signatures 6 (b) and 6 (a) on Exts. B and B-I respectively and he also admitted his signature on Ext. 6 which purports to be a receipt granted by him to defendant for having received the rajbhag paddy relating to fasli 1370.

Banchanidhi Patnaik D. W. 3 is one of the attestors to Ext. B-I and he deposed that Chatti Balakrishnama executed the receipt after getting rajbhag paddy from the defendant and that he signed in the receipt after it was read over to him. The case however of the plaintiff's trustee is prevaricating. In the plaint it was stated that he being a young man who had no knowledge of Oriya and who cannot read Oriya, signed in the paper given by the defendant. This statement indicates that he signed on the paper on which something had been written in Oriya. During his examination in Court he stated as follows :--

"I went to that village and signed on some papers. The contents of the writing were neither explained nor read over to me".

This is in accordance with the averments made in the plaint that the Oriya writings were already there on the papers by the time he put his signatures there. But later in cross-examination he stated-

"The writing over Ext. 6 (b) was not there when I signed. I put my signature Ext. 6 (b) on a blank paper, xx xx I put my signatures Exts. 6 and 6 (a) on blank papers".

The above statements indicate that he signed on some blank papers. Apart from the fact that it appears from the evidence of the defendant and his two witnesses D. Ws. 2 and 3 that the plaintiff had signed on the receipts after the contents thereof were read over and explained to him, it is impossible to believe that the plaintiff a resident of Berhampur Town would put his signatures on blank papers or on papers containing writings the contents of which he did not care to know. It may be remembered that the earliest of these three receipts is Ext. B 1 dated 5-4-59 and this was a little more than a month after the plaintiff's aunt had written the post card Ext. C-11 to the defendant and to which reference has already been made. By the time Ext. C-11 was written, the defendant had already made it clear to the plaintiff that unless receipts were given to him he was not going to deliver the rajbhag and the defendant's motive in demanding receipts was being suspected by the plaintiff and his aunt.

It is highly improbable that thereafter during three successive years the plaintiff would have any confidence in the defendant so that he would lend his signatures

on papers produced by the defendant which were either blank or contained writings in Oriya which the plaintiff did not know. We have therefore no hesitation in accepting the conclusion arrived at by the learned Subordinate Judge that Exts. B and B-I and also the receipt containing the signature Ext. 6 of the plaintiff's trustee are genuine and signed by the plaintiff's trustee after fully knowing the contents thereof. These documents prove beyond any doubt that defendant is a bhag tenant in respect of the disputed lands under the plaintiff.

9. We accordingly hold in agreement with the learned Subordinate Judge that the defendant is a bhag tenant consequently and that the civil Court has no jurisdiction to order eviction of the defendant therefrom. In view of this finding it is not necessary to decide the further question whether the suit filed by one of the trustees of the plaintiff-deity is maintainable.

10. In the result, the appeal fails and is dismissed with costs.

G.K. Misra, J.

11. I agree.