

(2010) 09 OHC CK 0027

In the Orissa High Court

Case No : Writ Petition (C) No. 19371 of 2008

Sri Sunaram Singh and Others

APPELLANT

Vs

Smt. Saradhamani Singh and Others

RESPONDENT

Date of Decision : 16-09-2010

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115
Orissa Land Reforms Act, 1960 — Section 15(1)(B)

Citation : (2010) 110 CLT 866 : (2010) 2 OLR 769

Hon'ble Judges : R.N. Biswal, J

Bench : Single Bench

Final Decision : Allowed

Judgement

R.N. Biswal, J.—In this writ petition, the Petitioners have assailed the order dated 18.11.2008 passed by the learned Addl. District Magistrate, Mayurbhanj in O.L.R. Revision Case No. 02 of 2008 reversing the order of Sub-Collector, Baripada dated 30.01.2008 in O.L.R. Appeal Case No. 01 of 2006 wherein he had confirmed the order dated 6.7.2006 passed by the Tahasildar, Betanati in O.L.R. Case No. 51 of 2005.

2. Succinctly stated, the Petitioners are the sons of late Ruhia Singh. Late Purna Chandra Singh, the husband of Smt. Saradhamani Singh was the first cousin of late Ruhia Singh. The Petitioners filed a petition u/s 15(1)(b) of The Orissa Land Reforms Act, 1960 (hereinafter referred to as OLR Act) with prayer to declare them as Bhag Tenants in respect of five plots measuring Ac.5.11 decimals as described in detail in "B" Schedule of the petition and to injunct Smt. Saradhamani Singh (opp. party No. 1) from entering upon the said land. As per their case, they were inducted as Bhag Tenants by Muguni Singh, the first wife of late Purna Chandra Singh in respect of "B" Schedule land of the petition about more than 20 years back. Since then, they have been possessing the said land on payment of Sanja on yearly basis to Muguni Singh till her death and after her demise, to the opp. party No. 1, the second wife of late Purna Chandra Singh. It

is the further case of the Petitioners that taking advantage of the simplicity and illiteracy of their father, Purna Chandra Singh managed to record the disputed land in his favour in the Major Settlement. However their father was in peaceful possession over the disputed land as Bhag Tenant till his death. For the first time, on 10.01.2005, they came to know about the recording of the disputed land in the name of Purna Chandra Singh in M.S. R.O.R., when opp. party No. 1 threatened to dispossess them from said land. Hence, they filed the petition u/s 15(1)(b) of the O.L.R. Act with prayer as stated earlier before the Tahasildar, Betanati, Mayurbhanj, which was registered as O.L.R. Case No. 51 of 2005.

3. Opp. party No. 1 in her objection admitted the relationship of the Petitioners with her husband and herself. According to her, she married Purna Chandra Singh in the year, 1960. During that time, her husband was cultivating the disputed land. After his death, she has been cultivating the same with the help of her adopted son, Purna Singh since last 40 years. Neither her husband ever gave the land in question to the Petitioners' father nor she herself gave the same to the Petitioners on Bhag basis.

4. On the basis of the above pleadings of the parties, the learned Tahasildar, Betanati framed five issues. To establish their case, the Petitioners examined 8 witnesses while the opp. party was satisfied by examining 5 witnesses including herself. After assessing the evidence on record, the learned Tahasildar held that the Petitioners were cultivating plot Nos. 1745 and 1752 out of 5 disputed plots prior to 2005 on Sanja basis and that opp. party No. 1 in her evidence admitted the same and accordingly vide order dated 6.7.2006 allowed the petition u/s 15(1)(b) of the O.L.R. Act in part and declared the Petitioners as Bhag Tenants in respect of Plot Nos. 1745 and 1752 measuring Ac.3.11 and allowed them to continue their possession over the same on payment of Sanja at the prevailing rate in the locality. Being aggrieved with the said order, opp. party No. 1 preferred an appeal before the Sub-Collector, Baripada, which was registered as O.L.R. (Appeal) Case No. 1 of 2006. After hearing learned Counsel for the parties, learned Sub-Collector, upheld the order of Tahasildar and dismissed the appeal vide order dated 30.1.2008. The said order was challenged by the Appellant in O.L.R. Revision Case No. 2 of 2008 before the Addl. District Magistrate, Mayurbhanj, who allowed the revision and set aside the orders of both the trial Court as well as appellate Court vide order dated 18.11.2008 holding that, the Petitioners did not file any document to substantiate their claim as Bhag or Sanja tenant under opp. party No. 1; that the evidence with regard to the period of cultivation of Sunaram Singh and Ors. (Petitioners) over the two disputed plot Nos. 1745 and 1752 differed from one another and that even though the said two disputed plots were recorded in the name of Purna Chandra Singh forcible possession of the same has been shown in the remark column of the R.O.R. by Maheswar Mahant, Ramesh Mahant and Umakanta Mahanta, all sons of Hadi Mahant, which were not taken into consideration either by the trial or by the appellate Court. Being aggrieved by the order of Revisional Court the Petitioners have preferred the present writ petition.

5. Learned Counsel appearing for the Petitioners submitted that when both the trial Court as well as the appellate Court held that the Petitioners have been cultivating plot Nos. 1745 and 1752 on Sanja basis since prior to 2005, the revisional Court in its limited scope ought not to have reversed the said findings. Learned Counsel appearing for opp. party No. 1 while supporting the finding of the revisional Court further contended that when the Petitioners and opposite party No. 1 belong to one family, there is no question of cultivating the two disputed plots by the Petitioners as Bhag Tenants.

6. The power of the revisional Court in an O.L.R. proceeding is not limited unlike the power vested in the Civil Court u/s 115 of the Code of Civil Procedure. It can reassess the evidence. So, it cannot be said that the scope of revisional Court in a proceeding under the O.L.R. Act is very limited. In the present case, admittedly plot Nos. 1745 and 1752 have been recorded in the name of Purna Chandra Singh in M.S. R.O.R., albeit in the remark column forcible possession has been noted in respect thereof in the name of Maheswar Mahanta and others. Even though the Petitioners have taken the plea in the petition u/s 15(1)(b) of the O.L.R. Act that their father was possessing the disputed two plots during his life time, the learned Tahasildar held that the Petitioners were in possession of the same prior to 2005. He has not given any finding about the period of their cultivation. Similarly, he has also not given any finding that the father of the Petitioners were cultivating the said two plots during Major Settlement operation and thereafter. So, only because the father of the Petitioners was not cultivating the aforesaid plots during Major Settlement operation and thereafter, it cannot be said that Petitioners were not possessing the same prior to 2005. Execution of any document is not required to induct a person as Bhag Tenant in respect of any land. No doubt, evidence of the witnesses examined on behalf of the Petitioners differs from one another with regard to the period of cultivation of the two disputed plots by the Petitioners as Bhag Tenants, but when opp. party No. 1 herself stated in her evidence that in 2005, she told the Petitioners not to cultivate the land, as because they filed a case against her, it sufficiently indicates that they were possessing the said land prior to 2005. The witnesses examined on behalf of the Petitioners deposed that the Petitioners were possessing the two disputed plots as Bhag Tenants. So, learned Tahasildar rightly held that the Petitioners were in possession of the disputed two plots prior to 2005 as Bhag Tenants which was also rightly confirmed by the appellate authority. The revisional Court ought not have reversed the said order. If the impugned order is allowed to continue, it would lead to miscarriage of justice.

7. Accordingly, the writ petition is allowed, the order of the revisional Court is set aside and the orders of the trial Court as well as the appellate Court are hereby confirmed. No cost.