

(1990) 04 OHC CK 0006

In the Orissa High Court

Case No : Original jurisdiction case No. 693 of 1985

Sri. Sunirmal Maity and Others

APPELLANT

Vs

Sri. Shaktipada Adhak and Others

RESPONDENT

Date of Decision : 04-04-1990

Acts Referred:

Evidence Act, 1872 — Section 1
Orissa Land Reforms Act, 1960 — Section 15(1)

Citation : (1990) 69 CLT 764

Hon'ble Judges : K.P. Mohapatra, J;J.M. Mahapatra, J

Bench : Division Bench

Advocate : S.K. Nayak, for the Appellant; S.K. Nayak, for opp. party No. 1 and Addl. Standing Counsel for opp. party Nos. 3 to 5, for the Respondent

Final Decision : Allowed

Judgement

K.P. Mohapatra, J.—In this writ petition, Annexures 6, 7 and 8, orders passed by opposite party Nos. 5, 4 and 3 respectively have been challenged.

2. Facts stated in the writ petition are as follows: One Subal Chandra Adhak had four sons including opposite party Nos. 1 and 2 and two wives. He made a family settlement by a registered deed dated 11-1-1964 in which the disputed land with an area of Ac. 4.58 decimals in plot No. 8405 appertaining to khata No. 1793 in mouza Chudamani within Basudevpur Police Station, fell to the share of opposite party No. 2. After the family settlement, opposite party No. 2 remained in khas possession of the disputed land. He never inducted any bhag tenant in respect thereof. Therefore, he was recorded as a tenant in the record-of-rights of 1973 (Annexure 1). He, however, sold the disputed land in favour of the Petitioners by three registered sale deeds executed on 13-5-1980 and delivered possession thereof in their favour. Since then they have been in khas possession thereof.

Opposite party No. 1 filed O.L.R. Case No. 7 of 1980 (Annexure-2) before opposite party No. 5 u/s 15(1)(b) of the Orissa Land Reforms Act ("O.L.R. Act" for short) claiming that he was a bhag tenant under opposite party No. 2 in

respect of the disputed land and so such tenancy should be protected. In that case opposite party No. 2 who was made a party filed his written statement (Annexure 3) denying the tenancy. In the proceeding opposite party No. 1 did not produce a single document in the shape of rent receipt or otherwise to prove that he was a bhag tenant under opposite party No. 2 in respect of the disputed land. Opposite party No. 5 made an enquiry during which he went for local inspection and examined some witnesses on the spot. He did not afford opportunity to the Petitioners to cross-examine the witnesses. After close of enquiry he allowed the claim of opposite party No. 1 by order Annexure 6 which was confirmed in appeal by opposite party No. 4 in order Annexure 7 and in revision by opposite party No. 3 in order Annexure 8.

The Petitioners claim that opposite party No. 1 was never the bhag tenant under opposite party No. 2. After having purchased the disputed land, they have acquired ownership in respect thereof. The enquiry conducted by opposite party No. 5 was not in accordance with law, and accordingly all the impugned orders are unsupportable.

3. Opposite party No. 1 in his counter stated that opposite party No. 2 was serving as a teacher in West Bengal. As he was unable to cultivate the land, he inducted him as a bhag tenant. After the induction, he cultivated the disputed land as such and paid rajbhag for which, however, opposite party No. 2 did not grant any receipt. Nevertheless he paid the rent on behalf of opposite party No. 2 in respect of the disputed land and obtained receipts. He supported the impugned orders as legal and valid.

4. In the impugned orders Annexures- 6, 7 and 8 under challenge, the authorities under the O.L.R. Act found that opposite party No. 2 was the recorded tenant. The Petitioners were the purchasers. But, never the less opposite party No. 1 being the bhag tenant, his rights had to be protected. Accordingly a declaration was made that opposite party No. 1 was the bhag tenant.

5. Mr. S.K. Nayak-2, learned Counsel appearing for the Petitioners, urged that although opposite party No. 5 was authorised to make a local inspection, he conducted the same "by denial of natural justice to the Petitioners, inasmuch as he recorded some statements of witnesses on the spot, but did not afford opportunity for their cross-examination. In support of his contention, he has placed reliance on a Bench decision of this Court reported in 1973 (1) C.W.R. 729, Laxmidhar Panigrahi v. The State of Orissa, and Ors.

6. In order to appreciate the contention raised by the learned Counsel, we have gone through the record. We find that on 9-5-1981 opposite party No. 5 conducted a spot enquiry in the presence of both parties and recorded statement of five boundary tenants. The statements would show that they were recorded on 9-5-1981. No opportunity was given to the Petitioners for cross-examination. It does not appear that the Petitioners or any of them were present at the time of

the local inspection. There does not appear to be a memorandum of inspection recorded by opposite party No. 5 in order to indicate that the Petitioners or any of them were present when the statements were recorded. The spot was hardly a place for recording the statements of witnesses without advance notice to the parties. Even if parties were present, they could hardly get the services of counsel for cross-examination of witnesses brought and examined on the spot itself. In this connection, it is necessary to make reference to the observations made in the case of *Laxmidhar Panigrahi v. The State of Orissa and Ors.* (supra) that the Revenue Officer and the appellate and revisional authorities under the O.L.R. Act are "Courts" in the strict sense of the term. The proceeding under the O.L.R. Act is a judicial proceeding and, therefore, in terms of Section 1 of the Evidence Act, the provisions of that Act apply to the proceedings before the statutory officers under the O.L.R. Act. In the absence of legislative provision ousting the application of the Evidence Act to the proceedings under the O.L.R. Act, statutory authorities thereunder in dealing with judicial proceedings cannot overlook the provisions of the Evidence Act. If the Evidence Act is to be applied, all the oral evidence collected has to be subjected to cross-examination. Even if the Revenue Officer is not a "Court" in the strict sense of the term, rights of the parties cannot be taken away without giving them an opportunity of being heard in their interest. Reasonable opportunity will certainly imply that the statutory authority would act fairly, put the parties to notice of all materials that may be available to be used so that reasonable opportunity would be available to the parties to meet such evidence. A failure of natural justice in trial body cannot be cured by a sufficiency of natural justice in an appellate forum and where the evidence has not been properly received, the entire proceeding becomes vitiated because the foundation is not in accordance with law. The are in respectful agreement with the above principle.

7. In this case, as has already been referred to above, during spot enquiry impromptu boundary witnesses were called and their statements were recorded. These witnesses were not subjected to cross-examination and their statements have been taken into consideration by opposite party Nos. 3, 4 and 5 in deciding the case. The procedure adopted in recording the statements was not in accordance with law and was in a gross violation of the principle of natural justice. Therefore, the impugned orders under Annexures 6, 7 and 8 were vitiated and cannot be sustained. In our opinion, it is a fit case for remand to the lowest forum, namely, opposite party No. 5 so that he will afford opportunity to the Petitioners to cross-examine the witnesses who were examined on the spot. They should be summoned to the Court for the above purpose. If any of them will not be available for cross-examination despite sincere efforts and summons, his statement should be entirely ignored. No further opportunity should be given to the parties for adducing fresh evidence. After the cross-examination is over, the effect of all the materials collected during the proceeding should be taken into consideration and the order should be passed in accordance with law at an early date.

8. In the result, the writ petition is allowed and Annexures 6, 7 and 8 are quashed. The O.L.R. Case is remanded to opposite party No. 5 for disposal in accordance with law in the light of the observations made above. Parties to bear their own costs.

J.M. Mahapatra, J.

I agree.

Petition allowed.