
(1959) 08 OHC CK 0018
In the Orissa High Court
Case No : Civil Revision No. 158 of 1958

Srimati Radhamoni Debi

APPELLANT

Vs

Bhima Baral and Others

RESPONDENT

Date of Decision : 20-08-1959

Acts Referred:

Orissa Tenants Relief Act, 1955 — Section 2, 3, 3(1), 3(2)

Citation : (1962) 28 CLT 44

Hon'ble Judges : Barman, J

Bench : Single Bench

Advocate : R.N. Misra and R. Sahu, for the Appellant; Brajabandhu Das, for the Respondent

Final Decision : Allowed

Judgement

Barman, J.—The Plaintiff is the Petitioner in this civil revision directed against the judgment of the learned District Judge, Puri, in Rent Appeal No. 7/1 of 1957 confirming an order passed by the Rent Suit Officer, Puri, in Rent Suit No. 10953 of 1955-56. The matter arose in these circumstances: The Plaintiff brought a suit for arrears of Sanja rent for the year 1362 in respect of properties measuring 2 acres 16 decimals the total amount claimed being Rs. 153/-. The Defendants, six in number, were the tenants in respect of the said land against whom this suit was filed. They filed their written statement taking the defence that they had paid the rent on the basis of the produce rent payable being 2 Bharans 20 Goucies. On December 31, 1956, the Rent Suit Officer passed an order deciding that the tenants will pay rent according to the provisions of the Orissa Tenants Relief Act of 1955 (Orissa Act V of 1955) and passed a decree for Rs. 35-3-0 in favour of the Plaintiff. The Rent Suit Officer also found that the Defendants were habitual defaulters and had not paid the dues for the suit year. In appeal, the learned District Judge confirmed the findings of the Rent Suit Officer For the purpose of deciding the present revision I am not going into the question of the alleged applicability of the Orissa Tenancy Act, 1913 (Bihar and Orissa Act II of

1913), as claimed, on the particular facts of this case. This Court proceeds on the basis that the Orissa Tenancy Act, 1913 has no application on the facts and circumstances of this case. Mr. R.N. Misra, learned Counsel appearing for the Plaintiff Petitioners by reference to various sections of the Orissa Tenants Relief Act (Act V) of 1955, contended that this was a fit case for remand for enquiry into certain matters hereinafter discussed, so that the suit can be decided on merits. In this context the learned Counsel drew my attention to the provisions of Section 3(1)(b) along with its provisos from which it is clear that the question of amount of gross produce of the land or the value thereof has to be decided, for determination of the issue as to what would be the arrears of rent due from the tenants. Besides, the third proviso to Section 3(1) provides that the value of such quantities of paddy shall be the market value as may be declared from time to time. Section 3, Sub-section (2) provides that notwithstanding anything contained in Sub-section (1) with its provisos referred to above, no tenant holding land on produce rent with permanent and heritable rights of cultivation therein on or after the first day of July 1954 shall, irrespective of whether such land is cultivated by the tenant himself or not, be liable to pay more than two thirds of the rate of rent payable in accordance with clauses (b) and (c) of Sub-section (1). Then Section 3(1)(b) provides that no such tenant shall be bound to pay more than one-fourth of the gross Produce of the land or the value thereof or the value of one fourth of the, estimated produce as rent (sic) the landlord. Reading Section 3(1)(b) and Section 3(2) appears that no tenant will have to pay more than two-thirds of one fourth, that is to say one-sixth of the gross produce of the land or the value thereof. That apart the nature of the land is also necessary to determine, in view of certain provisions in the Act. Section 2(k) defines "wet land" to mean land for which any cess, rate or tax for purposes of irrigation has been assessed under any law for the time being in force or any contract, custom or usage having the force of law irrespective of whether such cess, rate or tax has merged in the rent payable for the land or not. The explanation to Section 2(k) makes the position further clear that in relation to the land in the district of Ganjam "wet land" shall mean land recorded as such in accordance with any law for the time being in force, or with any practice or usage having the force of law. In other words, in the districts of Ganjam it will be relevant consideration to go into the question of nature of land. In this case, the suit land is situated in the district of Puri. Therefore, the question of nature of land will necessarily, have to be gone into as required by the Act.

2. It is quite clear that neither the rent Suit Officer nor the learned District Judge, in appeal, approached the question from this aspect. They both apparently overlooked these relevant provisions of the Orissa Tenants Relief Act (Act. V) of 1955 for the purpose of the present case. In this view of the matter I allow this revision, set aside the orders of the Courts below and remand the case to the Rent Suit Officer, Puri, to enquire as to the gross produce of the land, nature of the land nature of crop as also the prevailing market rate of the produce at the relevant time and to decide the suit according to law. The parties

will be at liberty to adduce fresh evidence as they may think necessary. In the circumstances of this case, there will be no order for costs of this revision.