

(2017) 07 OHC CK 0002

In the Orissa High Court

Case No : 52 of 1992

State of Orissa and another

APPELLANT

Vs

Purusottam Barik and others

RESPONDENT

Date of Decision : 10-07-2017

Acts Referred:

[Orissa Tenancy Act, 1913](#), [Section 5\(2\)](#),
[Section 23 \(1\)](#), [Section 24 \(1\)](#), [Section 55 \(C\)](#)

Citation : (2017) 07 OHC CK 0002

Hon'ble Judges : A.K.Rath

Bench : SINGLE BENCH

Advocate : Swayambhu Mishra, N.C.Mohanty, Debasis Pattnaik

Judgement

1. Defendant nos. 1 and 2 are the appellants against a confirming judgment.

2. Respondent no.1 as plaintiff instituted O.S.No.42 of 1982-I in the court of the learned Addl. Munsif, Balasore for declaration of occupancy right, confirmation of possession and permanent injunction impleading the appellants and respondents 2 and 3 as defendants. The case of the plaintiff is that the suit schedule land was recorded in the name of Kumar Udayanath Birbar in C.S. R.O.R. He was the proprietor of the estate. Jumina Bibi and others were the intermediary of the holding having Bajyapti Madhya Satwadhikary interest over the land. The intermediary abandoned the possession of the suit land just after the C.S. operation was over. Thereafter the proprietor took over the possession of the land in question. The kissam of the land was recorded as Puruna Padia, but in the column meant for recording the name of tenants, the same was recorded as canal, which was obviously a mistake. Though, in fact, there was a canal in the early part of 20th century, but a portion towards south of river Budha Balanga lying unused for more than fifty years. The same was neither used for irrigation nor for navigation purposes. The settlement authorities have mentioned the category of the land as Puruna Padia and recorded it under Bajyapti Madhya

Satwadhikari status. While the proprietor was in possession of the land, the plaintiff wanted to cultivate the same in question, whereafter the proprietor permitted him to reclaim the land in the year 1940. The father of the plaintiff was looking after the property of the proprietor for which the proprietor allowed his father to cultivate the land without taking any salami and rent. Before vesting of the estate, his father expired when he was young. His mother cultivated the land through labourers. While the matter stood thus, the Tahasildar, Balasore, defendant no.2 issued public notice to put the land into auction in the year 1968. The plaintiff came forward with a claim for settlement of the land. The defendant no.2 granted temporary lease in his favour in the year 1968 and, thereafter, renewed the lease till 1981. In the year 1982, defendant no.2 issued a notification to put the land into auction. He is a resident of suit mouza. He stacked claim before defendant no.2 to settle the land in his favour as he has acquired right of occupancy over the said land. The prayer was rejected by defendant no.2 on the ground that he was not eligible for settlement. Thereafter defendant no.2 put the land into auction and leased out the same in favour of defendants 3 and 4. His father and thereafter the plaintiff is in possession of the land since 1940 openly, peacefully and uninterruptedly and, as such, he has acquired right, title and interest over the same. He is a settled raiyat of mouza Tundara. He is cultivating the land as tenant under the Government. Although he had taken lease from year to year and the Revenue Officer, Balasore leased out the same either on selection basis or on auction basis annually, the character of the land being the occupancy holding, the act of the Government in leasing out annually under misconception and the act of the plaintiff in taking it lease cannot not operate as an estoppel. The defendants 3 and 4, who were the purchasers in auction sale dated 24.7.1981, tried to take forcible possession of the disputed land. With this factual scenario, he instituted the suit after issuing notice under Section 80 of C.P.C.

3. The defendants 1 and 2 filed a comprehensive written statement denying the assertions made in the plaint. The case of the defendants 1 and 2 is that kissam of the land recorded in C.S.Khatian is canal. The land was under the management of P.W.D. The same was actually utilized for maintenance of canal for navigation purpose till middle part of 20th century. It is a Government land. The same is in possession of the Government as Coast Canal Nayanjori. Neither Kumar Udayanath Birabar nor Jumina Bibi had any right, title and interest over the suit land. The reclamation and possession of the suit land by the plaintiff's father has been denied. The specific case of the defendants 1 and 2 is that the land was not in possession of the plaintiff's father nor the plaintiff prior to 1968-69. The suit land was leased out to the plaintiff in the year 1968-69 on annual auction sale basis as highest bidder. The coast canal was under the direct control and management of the Power & Irrigation Department. The suit land was recorded under Bharat Samrat as Proprietor in First Part Khewat-6. To gear up the "grow more food programme" all the surplus land of the Government (including the land found surplus for the time being) were brought into

cultivation by granting annual lease to the intending cultivators of the locality. The suit land including other lands of Power and Irrigation Department were leased out by the respective Department. For better management of the surplus land of other Department including the suit land of Power and Irrigation Department were temporarily relinquished to the Revenue Department during the year 1962-63. As per the Government Orders contended in Revenue Departments G.O.No.30115-R dated 21.5.1966, the suit land was leased out to the plaintiff through auction sale for the year 1968-69 at Rs.25/-. Since then lease of the auction holder was renewed on his application form year to year and payment of premium equal to ten times of annual rent prevailing the vicinity in execution of the annual agreement. There was no intention of conferring occupancy right on the lessee nor any other right except to cultivate it annually on payment of lease money. The lease could have been revoked at any time in violation of the terms of lease agreement signed from year to year. Right of occupancy will not accrue in respect of the suit land under Section 55 (C) of the Orissa Tenancy Act, 1913.

4. The defendants 3 and 4 have filed written statement contending inter alia that the plaintiff was in occupation of the land and used to raise paddy crops. They took part in the auction. The plaintiff did not handover possession of the suit land. Thereafter they requested the defendant no.2 to hand over the possession of the land. Defendant no.2 kept quite.

5. On the inter se pleadings of the parties, the learned trial court struck eleven issues. To substantiate the case, the plaintiff had examined three witnesses and on his behalf, nine documents had been exhibited. The defendants had examined one witness and on their behalf, twenty one documents had been exhibited. The learned trial court came to hold that Kumar Udayanath Birabar was the proprietor of the suit land. Lease was granted to the plaintiff in the year 1968-69 on annual lease basis. The same was renewed from time to time till 1981. The plaintiff was a lessee under the Government from the year 1968 to 1981. It further held that the plaintiff was not in possession of the suit land from 1940. Notwithstanding bar contained in Section 55(C) of the Orissa Tenancy Act, the plaintiff acquired occupancy right over the land. Held so, it decreed the suit. The defendants 1 and 2 unsuccessfully challenged the said judgment and decree before the learned District Judge, Balasore, which was subsequently transferred to the court of the learned Additional District Judge, Balasore and renumbered as M.A.No.6/40 of 1990/87-I. The same was eventually dismissed.

6. The Second Appeal was admitted on the substantial question of law enumerated in ground no.4 of the memorandum of appeal. The same are: "A) Whether in view of the findings that the respondent no.1 was a lessee from year to year since 1968, he has acquired occupancy right over the suit land. B) Whether Section 23 of the Orissa Tenancy Act, 1913 is applicable to the instant case ?

C) Whether Section 55(c) of the Orissa Tenancy Act is a bar to institution of the

suit ? D) Whether in view of Section 2(c) of the Orissa Act 10 of 1951, the respondent no.1 can be said to have acquired occupancy right over the suit land ?"

7. In course of hearing, the following substantial question of law was formulated. "1. Whether the judgment of the learned appellate court is sustainable in law when the specific case of the plaintiff was that he took possession of the suit schedule land in the year 1940, when he was born in the year, 1941 ?"

8. Heard Mr.Swayambhu Mishra, learned Additional Standing Counsel for the appellants and Mr.N.C.Mohanty, learned counsel for respondent no.1 as well as Mr.Debasis Pattnaik, learned counsel for respondent nos.2 and 3.

9. Learned Additional Standing Counsel for the appellants submitted that the suit land belongs to the Government. The same was put to auction annually. In the year 1968-69 the plaintiff participated in the auction. He was the highest bidder. Lease was executed in his favour on payment of salami. The lease was renewed from year to year on the application filed by the plaintiff till 1981. The plaintiff had taken a prevaricating stand. According to him, he approached the proprietor to cultivate the land in the year 1940. The proprietor permitted him to reclaim the land as the suit was instituted in the year 1982. The plaintiff was forty years at the time of institution of the suit. Thus he was born in the year 1941. He advanced claim that he was the proprietor in the year 1940. He further submitted that the plaintiff is not an occupancy raiyat. The suit is thoroughly misconceived.

10. Per contra, Mr.Mohanty, learned counsel for respondent 1 submitted that father of the plaintiff approached the proprietor to cultivate the land. The land was lying fallow. The proprietor accorded permission. His father reclaimed the suit land. He was in possession of the same. Before estate vested in the State, he expired. Thereafter the mother of the plaintiff and thereafter the plaintiff are in possession of the suit land. Since the suit land was put to auction, the plaintiff had no option to participate in the same. The plaintiff is in possession of the suit land since the time of his father. He has acquired occupancy raiyat over the same, since he is a settled raiyat of the village. Both the courts below concurrently held that the plaintiff has acquired occupancy right. There is no perversity in the findings of the courts below.

11. Mr.Pattnaik, learned counsel for respondents 2 and 3 submitted that defendant nos.3 and 4 had participated in the auction in the year 1981-82. They were the highest bidder, but possession of the land was not delivered to them.

12. The word "raiya" has been defined in Sec. 5(2) of Orissa Tenancy Act. It means primarily a person who has acquired a right to hold land for the purpose of cultivating it by himself, or by members of his family or by hired servants, or with the aid of partners, and includes also the successors-in-interest or persons who have acquired such a right. Sec. 23 (1) of the Act provides that every person who, for a period of twelve years whether wholly or partly before or after

the commencement of Act, has continuously held as a raiyat land situate in any village, whether under a lease or otherwise, shall be deemed to have become, on the expiration of that period, a settled raiyat of that village. Sec. 24 (1) postulates that every person who is a settled raiyat of a village within the meaning of Sec. 23 of the Act shall have a right of occupancy in all land for the time being held by him as a raiyat in that village.

13. Admittedly, the land belongs to the Government. The same was put to auction in the year 1968-69. The plaintiff participated in the same. He was the highest bidder. The land was leased out annually. On the application filed by the plaintiff, the lease was renewed from time to time till 1981. The plaintiff is a lessee. The lessee by no stretch of imagination can be said to be occupancy raiyat. The suit is thoroughly misconceived. Both the courts below abruptly came to a conclusion that the plaintiff is an occupancy raiyat. Though, on a threadbare analysis of the evidence on record and pleadings, the courts below came to hold that the plaintiff was a lessee from 1968 to 1981, but abruptly came to a conclusion that he was occupancy raiyat. The findings of the courts below are perverse.

14. Section 55 (C) of the Orissa Tenancy Act provides as follows: "55. Bar to acquisition of right of occupancy in and to application of Chapter VI to, proprietor's private lands and certain other lands. xxx xxx xxx (c) land recorded or demarcated as belonging to the Government or to any Local Authority which is used for any public work, such as a road, canal or embankment, or is required for the repair or maintenance of the same, while such land continues to be so used or required."

15. Section 55 (C) of the Orissa Tenancy Act is a bar to institute the suit in respect of land belonging to the Government or any local authority which is used for any public work mentioned in the section. The land was recorded in the name of the Government in C.S. R.O.R. It's kissam is "Canal". Thus, suit for declaration of occupancy raiyat is a bar.

16. In paragraph-5 of the plaint, it is stated that the plaintiff had approached the ex-proprietor in the year 1940 to cultivate the land in question and the ex-proprietor accorded permission. The suit was instituted in the year 1982. The plaintiff was 41 years at that time. Thus he was born in the year 1941. Thus the very foundation of the claim of the plaintiff is false. Evidence adduced by the plaintiff that his father approached the ex-proprietor in the year 1940 is beyond pleadings.

17. In the result, the plaintiff's suit must fail. The appeal is allowed, but in the circumstances of the case, the parties are to bear their own costs throughout.