

(2008) 02 OHC CK 0022

In the Orissa High Court

State of Orissa and Another

APPELLANT

Vs

Sahukar Gurumurty

RESPONDENT

Date of Decision : 13-02-2008

Acts Referred:

Orissa Prevention of Land Encroachment Act, 1972 — Section 16

Citation : (2008) 105 CLT 800 : (2008) 2 OLR 170 : (2008) 15 OLR 401

Hon'ble Judges : A.K. Parichha, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

A.K. Parichha, J.—This second appeal by the Defendants is directed against the Judgment of Learned Additional District Judge, Jeypore passed in T.A. No. 29 of 1990 confirming the Judgment and decree passed by the Learned Sub-ordinate Judge, Jeypore in T.S. No. 221 of 1986.

2. The Respondent as Plaintiff brought the suit to declare him as the owner of the suit land and to restrain the Defendants from interfering with his session and in the alternative to recover possession of the suit property, if found is possessed in the meantime by the Tahsildar in the OPLE proceeding. The case of the Plaintiff in brief is that the land appertaining to Plot Nos. 126 and 127 in Khata No. 74 of Mouza- Neelakantheswarpur with other lands recorded as hal plot Nos. 1042 and 1043 of Khata Nos. 75 and 76 belonged to one Shyam Ghadai who sold those lands to one Ballaba Ghadai vide registered sale deeds dated 08.08.1943 and 03.11.1943. Ballaba Ghadai possessed those lands till 1951 when he sold the same to Champa Deherani, the guardian of Trinath Behera under registered sale deed No. 959 dated 27.5.1951. Trinath Behera possessed the said land for two years and sold it to Suryanarayana vide registered sale deed No. 5911 dated 15.04.1953. Suryanarayana sold the suit land to the Plaintiff by registered sale deed No. 434 dated 21.02.1966. The Plaintiff thereafter possessed that land continuously. The Survey and Settlement operation took place in the year 1950 and 1952, wherein the above said lands were given four plot numbers, such as,

126, 127, 1042 and 1043. Plot Nos. 1042 and 1043 of Khata Nos. 75 & 76 were recorded in the name of the Plaintiff whereas plot Nos. 126 and 127 of Khata No. 74 were recorded in favour of the Government of Orissa under a misnomer. Although the boundaries of the land noted in the sale deeds covered all the four plots yet, basing on the entry in the Record of Right, Tahasildar, Jeypore initiated OPLE Case No. 103/70 for eviction of the Plaintiff from plot Nos. 126 and 127 and passed an order of eviction. The Plaintiff preferred appeal vide OPLE Appeal No. 2/79 but the order of eviction was confirmed.

3. The Plaintiff preferred revision No. 10180, but the order of eviction was not interfered. So, he filed the suit seeking the above mentioned reliefs. The Defendants in their written statement refused the claim of the Plaintiff over plot Nos. 126 and 127 and pleaded inter alia that those two plots are Anabadi land belonging to the State and never formed part of the lands purchased by the Plaintiff. It was also pleaded that the suit land was never raiyati land and, therefore, there was no question of the Plaintiff deriving any raiyati status over the same. Maintainability of the suit was also challenged on the ground that it was barred by limitation having been filed more than 12 years after the publication of R.O.R.

4. Learned Trial Court framed nine issues. The parties led oral and documentary evidence. On consideration of those evidence, Learned Trial Court held that plot Nos. 126 & 127 formed part of the lands purchased by the Plaintiff, that the Plaintiff and his predecessors-in-interest were in possession of these lands and the Plaintiff has derived title over the same; that the suit is not barred by limitation and is not hit by Section 16 of the O.P.L.E. Act. With these findings Learned Trial Court decreed the suit. The Defendants carried appeal, but the decree of the Trial Court was confirmed in that appeal and therefore, the present second appeal has been filed.

5. The following substantial questions of law were formulated for consideration in the second appeal:

(i) Whether in absence of the suit plots in the registered sale deed Learned lower Appellate Court could have held that the boundary given in, the sale deed covered the four plots?

(ii) Whether in view of the order of eviction passed in OPLE Case and appeal for eviction of the Plaintiff from plot Nos. 126 & 127, the suit could have been decreed declaring right title and interest of the Plaintiff ?

An additional ground was also formulated by the Appellants, namely; Whether the suit is entertainable without a prayer to set aside the order passed under the OPLE Act.

6. Mr. Sangram Das, Learned Addl. Standing Counsel appearing for the Appellants submits that Plot Nos. 126 & 127 of Khata No. 74 never formed part of the subject matter of the sale deeds as those plots were never mentioned in

the sale deeds even after publication of the record of rights. He states that when both the plot numbers and boundaries are mentioned and there is discrepancy between the two, then the boundary of the land as given is to be preferred, but when the plot numbers have not been mentioned, there is no scope of preferring the boundary. In support of this contention he relied on the case of *The Union of India Vs. Kishorilal Gupta and Bros.*, which contains an observation that when the words are clear and unambiguous, there is no scope for drawing upon hypothetical consideration or supposed intentions of the parties. His further contention is that the suit lands having already been recorded in the settlement record as the property of the State, the Defendant-Appellants had legal authority to initiate a proceeding for eviction under the OPLE Act, which is a special Act. So, Civil Court had no jurisdiction to sit on Judgment over the order passed by the O.P.L.E. Courts or to declare the right title of the Plaintiff over such lands. He also argued that the Plaintiff not having asked for setting aside the order passed by the O.P.L.E. Courts, the suit was not maintainable.

7. Mr. P.V. Balkrishna, Learned Counsel for the Respondent on the other hand, submits that there are ample evidence including the reports of the survey knowing persons that the boundary noted in the sale deeds covers all the four plots, namely; 1042, 1043, 126 & 127 and therefore, the Courts below committed no error in concluding that non-mention of plot Nos. 126 & 127 was a mistake and that the suit land form part of the property purchased by the Plaintiff from Suryanarayan. He cited the case of *Smt. Rajani Routray v. Smt. Kamal Kumari Dei and Anr.* 2000 (I) QLR 147 wherein this Court observed that in case there is conflict between the plot number and boundary and the boundaries given are definite and firm, boundary would prevail and the land indicated within the boundaries should be considered to be the subject-matter of the deed. On the point of the jurisdiction of the Civil Court, he submits that whenever there is a bona fide dispute between an individual and the State regarding ownership of a particular land then the State cannot be permitted to assume its own right title over the property and initiate OPLE proceeding for eviction of the individual. He states that in such situation, the matter has to be moved before the Civil Court to decide the right title of the parties. In support of his submission he relies on the case of *Government of Andhra Pradesh Vs. Thummala Krishna Rao and Another*, .

8. The genuineness of the sale deeds through which successive transfers of the land took place is not under serious challenge. The only aspect which was hotly contested before the Courts below was whether the plot Nos. 126 & 127 of Khata No. 74 formed part of the lands, which were sold through the sale deeds. While the Defendants asserted that these two plots belong to the state and was never the subject-matter of the sale transaction in favour of the Plaintiff, it was the case of the Plaintiff that the lands in plot Nos. 126 & 127 along with the lands in plot Nos. 1042 & 1043 were all subject-matter of the sale transaction, but inadvertently plot Nos. 126 & 127 were not mentioned as the parties were not aware of the fact that the plot Nos. 126 & 127 have been allotted to part of the

land purchased and were also unaware of the recording of those plots in the name of the state. It was maintained by the Plaintiff that boundaries given in all the sale deeds describe the actual lands purchased by the Plaintiff. A retired Amin of the Tahasil was sent for demarcation of the land described in the sale deed. He reported that plot Nos. 126 & 127 are covered within the boundary noted in the sale deed. In OPLE proceeding the Revenue Supervisor was deputed for field visit and he submitted a report of his field visit after conducting survey. His report also revealed that the boundary noted in the sale deed embraced Plot Nos. 1042, 1043, 126 & 127. In fact basing on his report, the order of eviction was passed.

9. Thus, the report of the experts from both the sides revealed that the boundaries noted in the sale deeds actually cover of the above noted four plots, even though in the hal settlement record plot Nos. 126 & 127 stand recorded in the name of the State. Law is well settled through judicial pronouncements of the Apex Court as well as of this Court that if there is a conflict between plot numbers and boundaries and the boundaries given are definite and firm, the boundaries would prevail and the land indicated within the boundaries should be considered to be the subject-matter of the deed. Now the boundaries noted in the sale deeds are firm and clear and survey knowing personnel from either side have given opinion that the boundaries noted in the sate deeds cover plot Nos. 126 & 127. That being so, Learned Courts below cannot be blamed for ruling that the suit land in plot Nos. 126 & 127 forms part of the lands purchased by the Plaintiff. In such situation, the ratio of *The Union of India v. Kishorilal Gupta and Bros* (supra) has not application.

10. It has already been clarified in the case of *Govt. of Andhra Pradesh v. Thummala Krishna Rao and Anr.* (supra) that the summary remedy for eviction u/s 6 of the Act can be resorted to by the Government only against persons, who are in unauthorized occupation of any land which is the property of Government. If there is a bona fide dispute regarding the title of the government to any property, the Government cannot take unilateral decision in its own favour that the property belongs to it and on the basis of such decision take recourse to the summary remedy provided u/s 6 of the Act for evicting the person who is in possession of the property under a bona fide claim or title. The summary remedy prescribed by Section 6 is not the kind of legal process which is suited to an adjudication of complicated question of title. This principle has also been reiterated by this Court in several cases including the case of *District Collector representing state of Orissa and also in his capacity as Collector and Ors. v. Nirupama Behera and Ors.* 2007 (1) OLR 550. In the present case the Defendants claim plot Nos. 126 & 127 as its property and initiated OPLE proceeding for eviction of the Plaintiff. The Plaintiff came forward with the plea that the suit land in those two plots actually belongs to him and he is in possession of the same since long, although, those plots were wrongly recorded in the name of the State by the settlement authority behind his back. The pleadings, therefore, revealed a prima facie dispute relating to right title over the

suit land between the parties. It was not a case where the suit land admittedly belonged to the Government and the Plaintiff was in unauthorized occupation of the same. Since the dispute related to complicated question of right title over the suit property, the State had no legal authority to assume title over the suit property and start the eviction proceeding against the Plaintiff. In such back-drop, the Civil Court had jurisdiction to entertain the suit and decide the question of right title of the parties and also to pronounce that the order of eviction is untenable.

11. It is submitted on behalf of the Appellants that without a specific prayer to set aside the order of eviction passed in OPLE proceeding, the suit was not maintainable. First of all there is a pleading challenging the legality of the OPLE proceeding and the order of eviction. That apart, the answer to the question is already recorded in the preceding paragraphs.

12. In the result, the substantial questions of law formulated are all answered against the Appellants. The appeal is, therefore, dismissed on contest, but in the peculiar circumstances without any cost.