
(2007) 01 OHC CK 0056
In the Orissa High Court
Case No : R.V.W. Pet No. 13 of 2006

State of Orissa and Another	Vs	APPELLANT
Smt. Harapriya Bisoi and Another		RESPONDENT

Date of Decision : 10-01-2007

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 47 Rule 1, 114
Orissa Estates Abolition Act, 1951 — Section 3, 5, 8(1)
Stamp Act, 1899 — Section 47A

Citation : (2007) 01 OHC CK 0056

Hon'ble Judges : R.N. Biswal, J; L. Mohapatra, J

Bench : Division Bench

Advocate : S. Palit, A.K. Mahana, D. Biswal, H.K. Patsingh and A. Mishra, for the Appellant; Bansidhar Baug, B.R. Das, S.S. Ghosh, Bijan Roy, C. Choudhury, B. Mohanty, S. Mohanty, D.R. Das and B. Moharana, for the Respondent

Final Decision : Dismissed

Judgement

L. Mohapatra, J.—This review application is directed against the judgment dated 27.10.2005 passed by this Court in W.P. (C) No. 8282 of 2004. The writ application was filed by the opposite party No. 1 for a direction to the Petitioners in the review petition as well as the State-opposite parties for declaration of her tenancy right over the land in question and for acceptance of rent in respect of the same and for a further declaration that the State Authorities or its functionaries have no right, title and interest over the land in question and for a further direction not to interfere with her right, title, interest and possession over the land in question. After elaborate hearing, the writ application was allowed and it was held that Kamal Devi was a deemed tenant u/s 8(1) of the Orissa Estates Abolition Act, who had succeeded by her son Kishore Chandra Pattnaik and, thereafter the Petitioner, who purchased the same from Kishore Chandra Pattnaik under a registered sale deed. Having held thus, the Court further restrained the State Authorities and/or its functionaries from interfering with the possession of the opposite party No. 1.

2. Shri Palit, the learned Counsel appearing for the Petitioners challenges the correctness of the judgment on the following grounds.

1. The Petitioners-department was never represented before the Court when the writ application was heard since no counter affidavit was filed on behalf of the department.

2. The sale deed executed in favour of the opposite party No. 1 by the power of attorney holder, Kishore Chandra Pattnaik could not have been accepted in view of the fact that the power of attorney was a fraudulent one.

3. In connection with the very same dispute, O.J.C. No. 15984 of 1997 was pending and, therefore writ application could not have been disposed of before disposal of the aforesaid writ application.

4. The sale deed on the basis of which the opposite party No. 1 claimed title had been impounded and, therefore no reliance could be placed by the Court on the said document.

3. Shri Baug, the learned Counsel appearing for the opposite party No. 1 submitted that none of the grounds taken in the review application comes within the purview of Section 114 Order 47, Rule 1 of the CPC and, therefore, there is no merit in the review application even for admission. The learned Counsel also made submissions on merits of the case, which shall be dealt with later on. Before we deal with the review petition, it is necessary to refer to the back ground of the case.

4. The suit land is covered under Sabik Khata No. 918 and originally belonged to the ex-Intermediaries Choudhury Chakradhar Mohapatra and Ors. . Choudhury Chakradhar Mohapatra and Ramakrushna Mohapatra were having 12 annas share and Anr. ex-Intermediary Indramani Roul was having 4 annas share. Choudhury Chakradhar Mohapatra and Ramakrushna Mohapatra, who were having 12 annas share, with consent of Indramani Roul granted lease of Ac. 15.00 decimals from Sabik Plot No. 4047, Ac. 13.30 decimals from Sabik Plot No. 1726 and Ac. 25.65 decimals from Sabik Plot No. 1036 under Sabik Khata No. 918 in favour of one Smt. Kamala Devi under an unregistered lease deed (Hata Patta) on the 20th of March, 1933 and delivered possession thereof. They also collected rent from Smt. Kamala Devi in respect of the leasehold land. In the year, 1954 the estate of intermediary vested in the State u/s 3 of the Orissa Estates Abolition Act, 1951 (in short, "the Act"). On the date of vesting and prior to that, Smt. Kamala Devi was in peaceful possession of the disputed land as a tenant and as such, she became a deemed tenant under the State u/s 8(1) of the Act. The ex-Intermediaries on vesting of the land, submitted Ekapadia in favour of Smt. Kamala Devi in respect of the disputed lands as well as some other lands and accordingly, tenancy ledger was opened through the Tahasildar, Cuttack and rent was collected from Smt. Kamala Devi from 1954 to 1967. In between 1954 to 1967 there was no dispute so far as the tenancy right of Smt. Kamala Devi is concerned. Mouza Gadkan under which the disputed land is located was

transferred from Cuttack district to Puri district and, accordingly came under the jurisdiction of the Tahasildar, Bhubaneswar. On 4.7.1967, the Tahasildar, Sadar, Cuttack reported to the S.D.O., Cuttack that the Hata Patta granted by the ex-Intermediaries in favour of Smt. Kamala Devi had been antedated and is a fraudulent one. On the basis of such report, the S.D.O., Cuttack who was the O.E.A. Collector initiated a proceeding u/s 5(i) of the Act against Smt. Kamala Devi. The case was also transferred to the Court of the S.D.O.-cum-O.E.A., Collector, Bhubaneswar after change of jurisdiction. The O.E.A. Collector after inquiry and collecting evidence directed for cancellation of the lease granted in favour of Smt. Kamala Devi by order dated January, 1971. The said order of the O.E.A. Collector cancelling the lease was challenged by Smt. Kamala Devi in appeal and the appeal having been dismissed, she preferred a writ application before this Court in O.J.C. No. 8282 of 1974. The said writ application was disposed of on 29th October, 1976 setting aside the order of the O.E.A. Collector as well as the appellate authority and the matter was remitted back to the O.E.A. Collector for fresh hearing. After remand, the O.E.A. Collector disposed of the case on 24th April, 1989 holding that the deed of lease being prior to 1.1.1946 and being a genuine document, Smt. Kamala Devi should be accepted as a tenant, she having remained in possession of only seven acres of land out of the total lease hold lands and rent could be accepted in respect of those seven acres. Holding thus, the O.E.A. Collector sent the records to Member, Board of Revenue for concurrence. During pendency of the matter the Board of Revenue, Smt. Kamala Devi expired and was substituted by her son and legal heir Kishore Chandra Pattnaik. Challenging the order of the O.E.A. Collector dated 24th April, 1989, the said Kishore Chandra Pattnaik filed writ application before this Court in O.J.C. 2063 of 1992 for quashing the order of the O.E.A. Collector as well as the proceeding initiated by the O.E.A. Collector. This Court after hearing held that the O.E.A. Collector having found that the lease deed was prior to 1.1.1946 and was a genuine document, he had no jurisdiction to proceed with the inquiry under the provisions of the Act and the proceeding should have been dropped. The said judgment of this Court was not challenged by the State and, accordingly it had attained finality. Opposite party No. 1 is the purchaser of the said land from Shri Kishore Chandra Pattnaik through his power of attorney holder. Since rent was not accepted from the opposite party No. 1, a writ application was filed by her vide W.P. (C) No. 8282 of 2004 praying for reliefs as stated earlier. This Court in the impugned judgment held that the opposite party No. 1 has stepped into the shoes of Kishore Chandra Pattnaik having purchased the land under a registered sale deed and, accordingly, observed that she should be accepted as a tenant and rent should be collected from her and also passed a restraint order directing the State functionaries from interfering with her possession. The judgment passed in the said O.J.C. No. 8282 of 2004 disposed of on 27.10.2005 is the subject matter of the review in the present petition.

5. Before we deal with the grounds taken by the review Petitioner, it is necessary to refer to some of the judgments of the Apex Court with regard to limitation in

exercise of power of review. In this connection, reference may be made to the case of Haridas Das Vs. Smt. Usha Rani Banik and Others, The Apex Court in the aforesaid case observed that the Section 114 of the CPC does not even adumbrate the ambit of interference expected of the Court. The parameters are prescribed in Order 47 Code of Civil Procedure, which permit a rehearing "on account of some mistake or error apparent on the face of the records or for any other sufficient reason". The former part of the rule deals with a situation attributable to the applicant, and the latter to a jural action which is manifestly incorrect or on which two conclusions are not possible. Neither of them postulate a rehearing of the dispute because a party had not highlighted all the aspects of the case or could perhaps have argued them more forcefully and/or cited binding precedents to the Court and thereby enjoyed a favourable verdict. The Court further observed that the aforesaid observation is amply evident from explanation to Order 47, Rule 1 of the Code of Civil Procedure. In the case of Parsion Devi and Others Vs. Sumitri Devi and Others, , the Apex Court held that under Order 47, Rule 1 of the CPC a judgment may be opened to review inter alia, if there is a mistake or an error apparent on the face of record. An error which is not self evident and has to be detected by a process of reasoning, can hardly be said to be an error apparent on the face of the record justifying the Court to exercise its power of review under Order 47, Rule 1 Code of Civil Procedure. In exercise of the jurisdiction under Order 47, Rule 1 CPC it is not permissible for an erroneous decision to be "reheard and corrected". There is a clear distinction between an erroneous decision and an error apparent on the face of the record. While the first can be corrected by the higher forum, the latter only can be corrected by exercise of the review jurisdiction. A review petition has a limited purpose and cannot be allowed to be "an appeal in disguise".

6. Learned Counsel for the review Petitioners relied on a decision of the Apex Court in the case of Srinivasiah Vs. Sri Balaji Krishna Hardware Stores, to substantiate his argument. In the said judgment, the Supreme Court had dismissed the eviction suit filed by the landlord on the ground of bona fide need of his son for opening a shop, holding that behind tenanted premises there was vacant shop room which could be used as shop by landlord's son. The rent control appellate authority had observed that the room available behind the shop in dispute was a godown and not a shop room. This fact was not brought to the notice of the Court at the time of hearing and, accordingly the Court dismissed the eviction suit.

In the review petition, the Court observed that the eviction suit was dismissed solely on the ground that a shop room was available behind the disputed shop room, which could be used by the son of the landlord, and such fact was not brought to the notice of the Court. It was presented before the Court that the room available behind the shop room was a godown. Under the circumstances, the review was allowed.

The aforesaid decision is distinguishable on facts, if one looks at the grounds

taken in the review petition. The learned Counsel also relied on Anr. decision of the Apex Court in the case of S. Nagraj and Ors. v. State of Karnataka and Anr. reported in JT 1993 5 S.C. 27. In the aforesaid case, the Court held that the Court is not precluded from recalling or reviewing its own order, if it is satisfied that it is necessary to do so for the sake of justice. Again the facts involved in the said case are distinguishable from the present case. The Court in the aforesaid case observed that justice is a virtue, which transcends all barriers. Neither the rules of procedure nor technicalities of law can stand in its way. It was held, if the Court finds that the order was passed under a mistake and it would not have exercised the jurisdiction but for the erroneous assumption which in fact did not exist and its perpetration shall result in miscarriage of justice then it cannot on any principle be precluded from rectifying the error. Mistake is accepted as valid reason to recall an order. Difference lies in the nature of mistake and scope of rectification, depending on if it is of fact or law. But the root from which the power flows is the anxiety to avoid injustice. It is either statutory or inherent. The latter is available where the mistake is of the Court. In this connection, Anr. decision of the Apex Court in the case of Harinagar Sugar Mills Limited and Ors. v. State of Bihar and Ors. reported in Volume. (2006) 1 SCC 509 is also relevant. In the said case, the Apex Court held as follows:

With the help of learned Counsel for the parties, we have gone through the grounds on which the review had been sought by the Appellants of the order dated 30.8.2001. In our opinion, the High Court has rightly rejected the same by observing that the Appellants wanted to reargue the points which had been rejected by the High Court by its order dated 30.8.2001 against which the special leave petition, preferred by the Appellants, had already been dismissed. Though the review may have been maintainable but the Appellants could not be allowed to reagitate the points, which had already been decided by the Court. The review could be granted only if there was a mistake apparent on the face of the record. We do not find any such apparent mistake on the face of the record. The High Court in its order dated 30.8.2001 had taken the view that the amount deposited in the Court by the Appellants was in lieu of the market fee for the benefit of the Market Committee, and therefore the Market Committee was entitled to receive the same. Two views are possible on this point but the same cannot be a ground for reviewing the said order as it does not fall within the scope of review jurisdiction.

7. On analysis of the aforesaid decisions, it is clear that the scope of review u/s 114 as well as under Order 47, Rule 1 of the CPC is only confined to mistake or error apparent on the face of the record or for any other sufficient reason. The term sufficient reason is also liberally dealt with in the case of Haridas Das v. Usharani Barik (supra) as well as in the case of Parsian Devi and Ors. v. Sumitri Devi and Ors. (supra). In the light of the aforesaid decisions, the grounds taken by the review Petitioners are to be examined.

8. The first ground taken by the learned Counsel is that the review-Petitioners

which is a Government Department was never represented before the Court when the writ application was heard since no counter affidavit was filed on behalf of the department. As is evident from the writ application out of which this review arises, the review-Petitioners were opposite parties 1 and 2 in the writ application. The office of the Advocate General was representing the review-Petitioners. The counter affidavit was filed by the Tahasildar, who was opposite party No. 3 in the writ application and the learned Counsel for the State was heard on behalf of all the opposite parties. Since a specific stand has been taken to the effect that the review-Petitioners who are Government Department were not represented and counter affidavit was not filed, the Court called upon the office of the Advocate General to produce the records maintained by the office of the Advocate General in this regard and, accordingly, records have been produced along with list of dates prepared by the office of the Advocate General for convenience of the Court. From the record, it appears that on 21.9.2004 a copy of the writ application was received in the office of the Advocate General. On 18.11.2004, a copy of the writ application was received by the Assistant Law Officer, G.A. Department (Petitioner) but parawise comments were not sent. On 6.12.2004 vide letter No. 41799 (2) a copy of the writ application was sent to the G.A. Department as well as the Tahasildar, Bhubaneswar by K.C. Kar, Additional Standing Counsel asking for instruction. The said letter was written after the matter was listed on 3.12.2004. On 16.12.2004, a wireless message bearing No. 43223 was also issued intimating the continuance of the interim order and requesting for instruction from the Petitioners-department as well as the Tahasildar, Cuttack. On 12.1.2005, Anr. wireless message bearing No. 1062 was sent to the Petitioner for instruction after the matter was listed again twice on 21.12.2004 and 11.1.2005. On 25.1.2005, parawise comments of both the Petitioner and Tahasildar, Bhubaneswar were received in the office of the Advocate General. So far as review Petitioner is concerned, a counter affidavit was drafted by Shri P.K. Mohanty, the then Additional Government Advocate and concerned Officer of the Department was called for finalization of the counter affidavit on 19.8.2005. Since no officer came, a reminder was issued on 24.8.2005 to swear the affidavit. After receipt of the said letter on 29.8.2005, the Assistant Law Officer of the review Petitioners-department received a copy of the draft counter affidavit for vetting by the department. Even though the matter was listed on some other occasions, thereafter, a counter affidavit could be filed on behalf of the Tahasildar, Bhubaneswar. The draft counter affidavit taken by the Assistant Law Officer of the review-Petitioner department did not send back the counter after vetting, as a result of which, no counter could be filed on behalf of the review-Petitioner before the Court at the time of hearing of the writ application. It is, therefore evident from the record of the office of the Advocate General that all necessary steps have been taken to file a counter affidavit on behalf of the review Petitioners. Even though a draft counter affidavit had been sent for vetting on 29.8.2005, for almost one month there was no response from the review Petitioners department and counter was not filed.

9. Apart from the above, from the order sheet of the writ application out of which this review arises, it appears that on 14.12.2004, time was granted to the Government Counsel to file counter affidavit. Therefore, the case was adjourned for the purpose of filing a counter affidavit. On 11.1.2005, 3.2.2005 and 17.2.2005 the learned Government counsel prayed for further time to file counter affidavit and the prayer was allowed. The matter was again listed on 29.3.2005 and it was again adjourned. On 28.9.2005, the case was listed again but no prayer of adjournment was made by the learned Counsel for the State and, accordingly, on the basis of counter affidavit filed by the Tahasildar, Bhubaneswar, the writ application was heard and judgment was delivered on 27th October, 2005. It is also evident from the order sheet that time had been granted to the learned Counsel for the State for filing counter affidavit from 14.2.2004 till the case was heard on 28.9.2005. As is evident from the records produced by the office of the Advocate General Steps have been taken by the office of the Advocate General for filing of the counter affidavit but due to negligence on the part of the department, the counter was not filed. In view of the above, we hardly find any force in the contention of the learned Counsel for the Petitioners that the Petitioners-department was never represented before this Court as no counter affidavit has been filed on behalf of the department.

10. The second ground taken by the learned Counsel for the Petitioners is that the sale deed executed in favour of the opposite party No. 1 who was the Petitioner in the writ application, by the power of attorney holder of Kishore Chandra Pattnaik could not have been accepted as the power of attorney was a fraudulent one. Admittedly, no counter affidavit was filed by the review Petitioners and no such ground was taken in the counter filed by the Tahasildar, Bhubaneswar. This point neither has raised nor argued at the time of hearing of the writ application. Accordingly, no decision could be rendered on this point. It is also admitted by the learned Counsel appearing for both the parties that in this connection, a suit is pending between Kishore Chandra Pattnaik and the present opposite party No. 1 and probably because of pendency of the suit, such point was never raised before this Court. Accordingly, there is no scope to decide the issue. We, therefore find no force in second ground taken by the learned Counsel appearing for the review Petitioners.

11. The third ground of challenge is in connection with the very same dispute, Anr. writ application vide O.J.C. No. 15984 of 1997 was pending and before disposal of the said case, the writ application filed by the opposite party No. 1 could not have been disposed of. In the counter affidavit filed by the Tahasildar, Bhubaneswar there is mentioned about the pendency of such writ application but the said point was never raised by the learned Counsel for the department at the time of hearing. Since the point raised in the review petition in this regard was never argued and was abandoned, there is hardly any scope to entertain such a point in a review-petition.

12. The last and fourth ground taken by the learned Counsel for the review

Petitioners is that the sale deed on the basis of which the opposite party No. 1 claimed title had been impounded and, therefore, the Court could not have relied upon the said impounded document to hold that the opposite party No. 1 is the title holder in respect of disputed properties.

13. Learned Counsel also appearing for the review Petitioners submitted that there was no scope for this Court to declare Kishore Chandra Pattnaik as a deemed tenant since there was no such prayer in the writ application.

Sri Palit, the learned Counsel appearing for the review Petitioners submitted that the sale deed on the basis of which the claim was laid before this Court by opposite party No. 1 had been impounded and, therefore, title never passed to the opposite party No. 1. Learned Counsel appearing for the opposite party No. 1 in this connection submitted that the present case is a case of under valuation and, therefore the stamp case has been initiated u/s 47-A of the Stamp Act and the matter is sub judice. The learned Counsel appearing for the opposite party No. 1 submitted that so long as the matter is sub judice, the title of the purchaser under no circumstances is either kept in abeyance or arrested. The title in respect of the land passes to the purchaser, the moment the sale deed is registered. According to the learned Counsel for the opposite party No. 1, the sale deed has not been impounded, but because of under valuation, a proceeding has been initiated, which is sub judice. Before we deal with this points raised by the Petitioners, we make it clear that such a ground was never taken either in the counter affidavit filed by the Tahasildar nor in course of argument. In the case of Mahaliram Singhania and Others Vs. Upendra Nath Pandey and Others, it was held that the moment a sale deed is presented for registration, the registering authority cannot refuse to register the same on the ground of under valuation. The sale deed is to be registered and proceeding can be initiated for under valuation. In the present case, the sale deed has been registered and proceeding has been initiated for under valuation, which is sub judice. Apart from the above, objection with regard to admissibility of a document alleged to have been impounded has to be taken up at the initial stage and cannot be done when the document is produced for acceptance as evidence and if it is done so, such objection is deemed to have been waived. In this connection reference may also be made to the decision of the Apex Court in the case of Javer Chand and Others Vs. Pukhraj Surana, and in the case of Mahadev Ghosh v. Antryami Das and Ors. reported in 1972 Orissa 182. Admittedly, no such objection was ever raised when reliance was placed by the opposite party No. 1 on the sale deed at the time of filing of the writ application nor any objection was raised till disposal of the writ application. In view of the above, such question raised in the review petition cannot be entertained. It will not be out of place to mention that in the event it is found that the opposite party No. 1 has paid less stamp duty, she may pay the deficit stamp duty and, therefore no presumption can be drawn at this stage that in the event, additional stamp duties are to be required to be paid by the opposite party, the opposite party No. 1 may not pay and the sale deed shall be invalid. So far as the declaration of this Court that Kishore Chandra Pattanaik

being a deemed tenant is concerned, the law prescribes that the Intermediary automatically become a tenant u/s 8(1) of the Estate Abolition Act and no order need be passed declaring one to be a tenant as discussed in the judgment before this Court. u/s 8(1) of the Estate Abolition Act, the intermediary becomes a tenant automatically and, therefore Kishore Chandra Pattanaik was deemed to be a tenant. Even if the observation made by the Court in this regard is ignored, the fact that Kishore Chandra Pattnaik was a deemed tenant u/s 8(1) of the Estate Abolition Act is not wiped out and by operation of law he becomes a deemed tenant.

14. In view of the discussions made, we do not find any merit in the review application either on the facts or law and, accordingly the review application is dismissed.

R.N. Biswal, J.

15. I agree.