

(2003) 01 OHC CK 0035

In the Orissa High Court

Case No : Second Appeal No. 209 of 1991

State of Orissa and Others

APPELLANT

Vs

Dibakar Pati and Others

RESPONDENT

Date of Decision : 17-01-2003

Acts Referred:

Citation : (2003) 95 CLT 381

Hon'ble Judges : Pradip Mohanty, J

Bench : Single Bench

Advocate : R.N. Acharya, for the Appellant; B. Senapati, for the Respondent

Final Decision : Dismissed

Judgement

Pradip Mohanty, J.—In this case, the plaintiffs have prayed for a declaration for right, title and interest over the suit tank. The trial court has found against the plaintiffs, but in appeal, the judgment of the trial court was reversed. Hence, the State of Orissa and its functionaries have filed the second appeal challenging the judgment and decree passed by the lower appellate court.

2. The claim of the plaintiffs is founded as follows :

In 1898 "Shaunria" Settlement operation, the suit tank situated in Mouza Rahani, under Khata No. 2, plot Nos. 87, 88 and 89, measuring Ac. 1.97 decimals of Kamakhya Nagar Tahasil was recorded in favour of Abhimanyu Paramaguru and Nanda Mohapatra. They are the ancestors of the plaintiffs. The tank was excavated by their ancestors. The said tank is otherwise known as "Pati Ghara Tank, as the family members of Pati family were exclusively using the said tank. The plaintiffs and the proforma defendants had renovated and improved the tank through the technical adviser of Government agency. In 1923-24 the tank was recorded in the name of the Government without knowledge of the Pati family, but the plaintiffs and the pro-forma defendants continued to possess the suit tank as of their right and they were never dispossessed by the Government. On 3.5.1983 the plaintiffs filed a petition before the Settlement Officer,

Kamakhya Nagar, which was registered as Misc. Case No. 568 of 1983, to record their names, but they were directed to move the concerned Tahasildar for mutation. While the matter was pending before the Tahasildar, Kamakhya Nagar, defendants Nos. 4 and 5 (the Grama Panchayat Extension Officer and the Sarpanch respectively) illegally proposed to put the tank to auction on 31.8.1983. The plaintiffs moved the S.D.O. against the said action of defendants 4 and 5 and the S.D.O. had stayed the auction. However, the S.D.O. took the view that the tank was transferred to Birasal Grama Panchayat in 1962, but the tank was under the peaceful and continuous possession of Pati family and directed the plaintiffs to prove their ownership in the court.

In view of the above order of the S.D.O., the plaintiffs filed the suit for declaration of right, title and interest over the suit tank and for permanent injunction.

3. The defendants 1 and 5 have filed separate written statements stating therein that the ownership of the suit tank was vested with the ex-State of Dhenkanal till the date of merger with the province of Orissa in 1948. Therefore, the State of Orissa became the absolute owner of the said tank. In 1962 the control and management of the said tank was transferred to Birasal Grama Panchayat. It is specifically pleaded that the suit tank was a Government tank excavated long back by the then Ex-State of Dhenkanal. It is specifically denied that the plaintiffs or the pro-forma defendants renovated and did various improvements of the said tank.

4. After considering the evidence, both oral and documentary, adduced by both parties, the trial court dismissed the suit. The plaintiffs preferred appeal before the District Judge, who by order dated 10.5.91, allowed the appeal and set aside the judgment and decree of the trial court. Hence, this second appeal.

5. At the time of admitting the appeal, the following substantial question of law was framed.

"...whether in absence of any recognition of title of the plaintiff after merger of the State on 1.1.1948, plaintiff acquired title to the tank when such tank is recorded in the name of the defendant."

On the basis of the evidence on record, the trial court found that the suit tank appertaining to the revisional settlement plot Nos. 87, 88 and 89 corresponds to Sabik plot Nos. 1221 / 1293, 1221 / 1398 and 1221 / 1400 was not excavated by the ancestors of the plaintiffs, but by the Ex-State of Dhenkanal. It was further held that the suit tank has been transferred to Btrasal Grama Panchayat since 1962. In appeal, preferred by the plaintiffs, the lower appellate court while allowing the appeal, has recorded the following findings :

"... No other document has been filed to show that the Government was in management of the suit tank prior to 1962 and by the Panchayat after 1962 and in view of the clear finding of the learned S.D.O. under Ext. 2, the irresistible

conclusion is that the plaintiffs are all along in possession of the suit tank inspite of the entries in the R.O.R. in Exts. A and B and the Government never dispossessed the plaintiffs from the suit tank during these years."

6. It is admitted case of the parties that the land in which the suit tank is situated was recorded in the name of the ancestors of the plaintiffs in 1898 in Bhaunria settlement. The ex-State of Dhenkanal was merged with the province of Orissa on 1.1.1948. The letter of the Government transferring the suit tank to Birasa Grama Panchayat was not filed before the trial court. If at all the Grama Panchayat destroyed the said letter, the original letter could have been obtained from the office of the S.D.O., Kamakhya Nagar or from the State Government. No other document have also been filed by the Government to show that the Government was in management of the suit tank prior to 1962. It is the settled law that the entries in the R.O.R. (Exts. A and B) cannot create or extinguish title. There is also no evidence that the plaintiffs were ever dispossessed by the State Government from the suit tank. Therefore, the defendants-appellants have failed to prove that the suit tank was transferred to Birasal Grama Panchayat,

7. The Government claims that the suit tank was transferred in the year 1962 to Birasal Grama Panchayat, but there is no document showing the management of the tank by the said Grama Panchayat or the Government prior to 1962. There is no other document to show that the Government was in management of the suit tank prior to 1962 and by the Grama Panchayat after 1962 and in view of the clear finding of the S.D.O. in Ext. 2, the irresistible conclusion would be that the plaintiffs are all along in possession of the suit tank inspite of the entires in Exts. A and B and there is no evidence whatsoever that the plaintiffs were ever dispossessed by the Government from the suit tank during these years.

8. In view of the above finding, the plaintiffs were in continuous possession till filing of the suit in 1984. Hence, the plaintiffs have acquired prescriptive title over the suit tank being in possession for more than thirty years.

This Court finds no infirmity in the judgment of the lower appellate court. The findings of the ownership and adverse possession are the findings of fact based on the evidence on record and, therefore, the same is not to be interfered with by this Court.

9. For the above reasons, the second appeal fails and is thus dismissed, but without cost.