
(2009) 02 OHC CK 0062
In the Orissa High Court

State of Orissa

APPELLANT

Vs

Padmanav Pradhan and Others

RESPONDENT

Date of Decision : 13-02-2009

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 80
Land Acquisition Act, 1894 — Section 52
Limitation Act, 1963 — Section 27

Citation : (2009) 107 CLT 873 : (2009) 1 OLR 819 Supp

Hon'ble Judges : Sanju Panda, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Sanju Panda, J.—This appeal is directed against the Judgment and decree dated 15.5.1992 and 9.7.1992 respectively passed by the Learned Subordinate Judge, Deogarh in Title Suit No. 27 of 1990.

2. Respondents 1 to 8 as plaintiffs filed the suit for declaration of their right, title and interest over Schedule "A" lands as described in the plaint. They also prayed for recovery of Rs. 1,91,160 from the Defendants who are the State Government represented through the District Collector, Sambalpur and Land Acquisition Officer, Rengali and Bhirkund Irrigation Project, Sambalpur. The claims of the plaintiffs were as follows:

Rs. 1 ,46,160 towards the valuation of the suit land and pendente lite and future interest at the rate of 12% per annum: The plaintiffs in their plaint further pleaded that they are the sons and widow of the recorded tenant Pitabas Pradhan who died on 14.6.1988. During the period of Ex-Bamra Estate Rulers, Pitabas Pradhan and Khirod Bihari Pradhan applied for reclamation of Ac.6.00 of waste land each within the village boundary of Ambakata. Said village was adjacent to village boundary of Ranjana where they resided. The Ex-Rulers after proper demarcation granted permission for reclamation of the land in the years 1943-1944. Thereafter, both of them reclaimed the land and converted the same

to cultivable land by investing huge amount and possessed the same continuously. They also dug a canal for the purpose of irrigation to the reclaimed land and the said canal existed till submersion of the land in the year 1984. In the years 1943-1944 and 1944-1945, Pitabas Pradhan obtained lease of Ac.6.18 decimals of land for the purpose of cultivation and he possessed the same from the date of grant of the lease. Pitabas Pradhan, in total, possessed Ac.12.18 decimals of land and the said area was a compact block which was described in Schedule-A. The survey settlement operation was started in the area and it was taken upto Khanapuri stage. During Khanapuri stage, the possession of late Pitabas Pradhan in respect of the suit land was recorded. The aforesaid land was submerged in the year 1984 in Rengali Multipurpose Dam Project constructed by the Defendants-the present Appellants. However, they did not take any step for payment of compensation to the plaintiffs who are the successors of Pitabas Pradhan. Plaintiffs further pleaded that they were raising paddy crops in the disputed land before submersion. The quantum of paddy was nearly 100 pudugs per year and the net profit taking into consideration the value of the paddy after due deduction of expenditure was about Rs.15000 per year. Therefore, they claimed damage of Rs.15000 per year from the years 1987 to 1989 along with pendente lite and future damage at the above rate till payment of the market value of the suit land in lieu of compensation along with interest " 12% per annum. Pitabas Pradhan and Khirod Pradhan approached the Land Acquisition Officer for payment of compensation but nothing was paid to them. Pitabas Pradhan submitted the formal claim letter in respect of the suit land along with the letter of permission granted by the Ex. Bamra Estate and a case was registered for the said claim. However, at the time of filing of the suit, said permission letter was not traceable and the relevant register granting permission of the years 1943-1944 was also lost in the Record Room of the Sub-Divisional Office, Deogarh. Pitabas Pradhan was in continuous possession of the said land since 1943 and after him, the present plaintiffs being the successors-in-interest continued the said land and their possession was more than the statutory period. Therefore, they acquired title and interest over the suit land by prescription. Before filing of the suit, the plaintiffs issued notice u/s 80 of the CPC but Defendants did not take any step for payment of compensation. Hence the suit.

3. The Defendants filed their written statement denying the plaint averments. They specifically pleaded that Pitabas Pradhan never applied for grant of waste land of Ac.6.00 decimals in village Ambakata and no permission was granted to him so also no lease was granted in his favour for cultivation of Ac.6.18 decimals of land in the years 1943-1944 and 1944-1945. Neither the suit schedule land was in a compact block nor was it in actual cultivable possession of Pitabas Pradhan. As he was in unauthorized possession of the disputed land, Encroachment Case No. 173 of 1975 was started against him by the Tahasildar, Deogarh and an order of eviction was passed on 16.6.1975 by the competent authority and he was ousted from the possession of the disputed land and possession of Pitabas Pradhan was never recorded. As such, he had no right, title

and interest over the suit land and was also not entitled to any damage for the said land or interest thereof nor were his successors-in-interest also entitled to the said amount and the entry, if any, in Khanapuri stage regarding possession of Pitabas Pradhan was illegal and wrong and the same did not create any right over the suit land, as they are encroachers and the same being manipulated by Pitabas Pradhan who was in illegal and unauthorized possession of the disputed land which belongs to the State, they are not entitled to any compensation. The suit was also not maintainable as mandatory provision of the Land Acquisition Act was complied with; no valid and legal notice u/s 80 of the CPC was issued; and notice u/s 52 of the Land Acquisition Act was not served on the Defendants though the same was mandatory in nature. On the said plea, they prayed for dismissal of the suit.

4. On the basis of the above pleadings of the parties, the Learned Subordinate Judge framed as many as 16 issues for just decision of the case and some of the issues are extracted herewith:

xxx xxx xxx 7. Whether the settlement made in favour of the plaintiffs is illegal and wrong and does not confirm title in favour of the plaintiffs?

8. Whether Land Encroachment proceeding bearing No. 173 of 1975 was started against Pitabas Pradhan, the father of the plaintiffs 1 to 7 by the Tahasildar, Deogarh and Pitabas Pradhan was evicted from the suit land on 16.6.75?

9. Whether the plaintiffs, have acquired right, title and interest over the suit land by adverse possession by remaining in possession of the suit land more than the statutory period?

10. Whether rulers of Ex-Bamra State granted any lease in favour of Pitabas Pradhan to reclaim Ac.6.00 of land in village Ambakata?

11. Whether the Forest Department in the years 1943-44 gave permission to Pitabas Pradhan for reclamation of Ac.6.00 of land and from that year Pitabas Pradhan possessed the suit land and after his death the Plaintiff Nos. 1 to 7 possessed the same?

12. Whether Pitabas Pradhan was granted lease of Ac.6.18 decimals of land in the years 1943-44 and 1944-45?"

5. The plaintiffs in support of their case examined two witnesses and filed documentary evidence which were marked as Exts. 1 to 9. Defendants neither examined any witness nor did they file any documentary evidence in support of their case.

6. The Learned Subordinate Judge recorded the following findings:

The suit is maintainable. Notice u/s 52 of the Land Acquisition Act is not necessary. The suit is not barred by limitation and the same was also not under valued. Notice u/s 80 of the CPC was duly served on the Defendants.

So far as issue No. 7 is concerned, the Learned Subordinate Judge came to the conclusion that the settlement entry was made in favour of Pitabas Pradhan in the year 1967 as per Exts.4 and 6 and the said entry reveals that he was in possession of the disputed land from the year 1950 and the entry in Exts.4 and 6 do not confirm any title in favour of the plaintiffs but the same proves the possession of the plaintiffs. As the settlement authority has created a document according to the process of law, the said entry cannot be said to be illegal and wrong.

So far as Land Encroachment Case No. 173 of 1975 was concerned, the finding of the Learned Subordinate Judge was that since Defendants had not been able to prove by adducing evidence to that effect, it could be concluded that encroachment case was never started against Pitabas Pradhan and he was not evicted from the disputed land on 16.6.1975. Regarding issue Nos. 9 and 12, he held that Pitabas Pradhan remained in possession of the suit land from the years 1943-1944 and 1944-1945 till his death i.e. 14th June, 1988. The lease was granted in favour of Pitabas Pradhan in respect of Ac.6.18 decimals of land. As such, he was in possession of the suit land for more than 40 years. He was dispossessed therefrom in the year 1984 by which time a period of more than 30 years was completed. As such, he was in adverse possession of the suit land and had acquired title by prescription and the plaintiffs being successors-in-interest had acquired right, title and interest in respect of Ac.6.18 decimals of land by way of adverse possession. With regard to Ac.6.00 decimals of land which had been reclaimed by Pitabas Pradhan in Ambakata village, the plaintiffs proved the grant of the said land by the Ex-Rulers through P.W.1 but no document was produced in support of the said plea and the statement of P.W.1 being consistent, there was nothing to disbelieve him. As such, the Learned Subordinate Judge was of the opinion that the rulers of Ex.-Bamra estate granted lease in favour of Pitabas Pradhan to reclaim Ac.6.00 decimals of land in village Ambakata and the said land was possessed by him and after his death, his successors-in-interest the plaintiffs also possessed the same.

Since the plaintiffs were in possession in the land in question and their right, title and interest was declared, the Learned Subordinate Judge came to the conclusion that the plaintiffs were entitled to get damage " Rs.15000 per year from 1987-89 and they were also entitled to get Rs.12000 per acre as compensation for Ac.12.18 decimals of land. On the above findings, he decreed the suit and valued the entire compensation " Rs.1,46,160 as the market value of the land. Rs. 45,000 for damage for three years i.e. 1987 to 1989 which comes to Rs.1,91,160 and they were also entitled to pendente lite and future interest " 12% per annum till realization. However, he also decreed that the plaintiffs were entitled to get pendente lite and future damage " Rs.15000 per year till final payment was made.

7. The Learned Addl. Standing Counsel appearing for the Appellants submitted that the finding of the Trial Court regarding adverse possession of the plaintiffs in

respect of the suit land is not sustainable in the eye of law as the same was passed on erroneous appreciation of materials available on records. He further submitted that since the plaintiffs did not adduce any evidence regarding the market value of the land, its production capacity and the quantum of loss and damage sustained by them, the decree of the Court below in respect of the damages is liable to be set aside as the same is at the higher side.

8. The Learned Counsel appearing for the Respondents submitted that the plaintiffs' predecessor-in-interest got the disputed land from the rulers of Ex-Bamra Estate by way of grant of lease of an area of Ac.6.18 decs, of land which has been proved from Exts.8 and 9 for the years 1943-44 and 1946-47 respectively and from that date they were in possession of the suit land till it was submerged in the Rengali Dam Project. Therefore, their possession was for more than 30 years and they were entitled to declaration of their right, title and interest over the said land since they were in adverse possession thereof. So far as the rest Ac.6.00 decs, of land was concerned, since the plaintiffs had reclaimed the said land after taking permission from the forest department under the Ex-Bamra Estate in the years 1943-44 and since then they are in continuous possession of the land, they are entitled to declaration of right, title and interest in respect of the said land. As the said land belongs to the plaintiffs and they were in cultivable possession when the lands were submerged in the Rengali Dam Project in the year 1984, the plaintiffs are also entitled to damages and compensation in respect of the said land and the Trial Court has rightly held that notice u/s 52 of the Land Acquisition Act was not necessary and notice u/s 80 of the CPC was properly served on the Defendants. Therefore, the Trial Court has rightly decreed the suit. Hence, the Judgment and decree passed by the Trial Court should not be interfered with as there is no illegality or infirmity in the same.

9. This Court after considering the submissions of the Learned Counsel for the Appellants and the Respondents and going through the records finds that the plaintiffs' pleading regarding possession of the disputed land was that they possessed the same from the years 1943-1944 on the basis of lease granted to the predecessor-in-interest of the plaintiffs of an area of Ac.6.18 decs, of land vide Exts.8 and 9 which shows that the lease was granted for the years 1943-44 and 1946-47 respectively and the said lease was yearly lease, but there is nothing on record as to what happened thereafter. P.W.1 only has stated that the plaintiffs were in continuous possession of the said land. It is surprisingly to note that after vesting of the estate plaintiffs names had not been recorded in respect of the suit land and the same creates a doubt as to whether the plaintiffs were in possession of the land from 1947 to the date of vesting. No materials are available on record to that effect nor have the plaintiffs (sic) in that respect. So far as the reclamation (sic) the permission of the forest department of the Ex-Bamra estate is concerned, there is no record available whether any permission was granted to Pitabas Pradhan to reclaim the same and convert it to cultivable land. However,

Ext.4 is a copy of the Yadast of the year 1967 which reveals that Pitabas Pradhan was in illegal possession of the land. Ext. 5 is the copy of the order passed by the forest department of Ex. Bamra Estate on 3.10.1945 where it has been observed that-after completion of the canal the applicant Khirod Pradhan would get land for reclamation, but document does not reveal whether he was permitted to reclaim the land and cultivate the same. Therefore, the two documents i.e. Exts.4 and 5 do not create any right and title of the plaintiffs over the suit land. That apart, at no point of time it was within the knowledge of the Defendants as to who had title over the suit land. The plaintiffs possessed the land adverse to the title of the Defendants and having knowledge of the said facts the Defendants have not taken any step to evict the plaintiffs who thereby have perfected their title over the suit land by way of adverse possession.

10. For better appreciation, Article 112 of the Limitation Act is extracted below:

112. Any suit (except a suit before the Supreme Court in the exercise of its original jurisdiction) by or on behalf of the Central Government or any State Government, including the Government of the State of Jammu & Kashmir: Thirty Years : When the period of limitation would begin "to run under this Act against a like suit by a private person.

11. The period of limitation against the Government being 30 years, a person can convert his possession into an absolute title against the Government, only by proving possession for 30 years. Possession of a person for a period of 12 years does not exclude a claim by the Government to recover what can be shown to be Government property. In order to claim adverse possession against the Government, a person has to prove such possession for the full statutory period and he has to prove adverse possession. So on mere proof of long possession the burden is not shifted on the State to show that it had held possession within the period provided by the Article. (See Sankara Pillai Vs. Balakrishna Pillai and Others,). Only possession of a person occupying Government land without anything more cannot be adverse possession and such possession cannot be availed of for acquiring title against the Government.

12. Every possession is not, in law, adverse possession. A suit for possession of immovable property or any interest therein based on title can be instituted within a period of 12 years (in case of private land and 30 years in case of Government land as provided under Article 112 of the Limitation Act, 1963) calculated from the date when the possession of the Defendant becomes adverse to the plaintiff. By virtue of Section 27 of the Limitation Act as the determination of the period is limited by the Act to any person for instituting a suit for possession of any property, his right to such property stands extinguished. Therefore, a conjoint reading of Section 27 and Articles 65 and 112 of the Limitation Act reveals that the process of acquisitions of title by adverse possession springs into action essentially by default or inaction of the owner. A person in spite of having no right to enter into possession of the property of someone else, does so and continues to be in possession setting up title in himself and adversely to the title

of the owner (emphasis supplied), commences prescribing title into himself and such prescription having continued for a period of 30 years in case of Government land, he acquires title not his own but on account of default or inaction on the part of the real owner, which stretched over of 30 years results in extinguishing the latter's title. It is that extinguished title of the real owner which comes to vest in the wrong doer. The law does not intend to confer any premium on the wrong doing of a person in wrongful possession. It pronounces the penalty of extinction of title on the person who though entitled to assert possession, has defaulted and remained inactive for a period, which the law considers reasonable for attracting the said penalty. Inaction for a period of 30 years is treated by doctrine of "adverse possession" as evidence of the loss of desire on the part of the rightful owner to assert his rightful ownership and reclaim possession.

13. Ext. 4 does not conclusively prove that the plaintiffs and their predecessor-in-interest are in continuous possession of the suit land. Exts. 8 and 9 are only yearly leases and since the plaintiffs have not been able to prove whether they had obtained any lease after 1947 and whether they also obtained lease from the Government after vesting, neither the plaintiffs have been able to prove their continuous possession since 1934-1944 nor are they entitled to any right, title and interest over the suit land. Therefore, their prayer for declaration of their right, title and interest over the suit property is liable to be dismissed.

14. On the above position of law, in the present case, the finding of the Learned Subordinate Judge that the plaintiffs have acquired right, title and interest over the suit land is not sustainable. As such, the same is set aside. Since the finding of this Court that the plaintiffs have not been able to prove their right, title and interest over the suit properties and there is no material available on record regarding valuation of the suit land and the quantum of compensation they are entitled to, the finding of the Trial Court that the plaintiffs are entitled to the damages and compensation is liable to be set aside being devoid of merits. The plaintiffs have not been able to prove their right, title and interest over the suit property. Therefore, they are also not entitled to any compensation.

15. In view of the above findings, the first appeal is allowed.