
(1998) 01 OHC CK 0004
In the Orissa High Court
Case No : F.A. No. 65 of 1987

State of Orissa

APPELLANT

Vs

Pranabandhu Sahu and Another

RESPONDENT

Date of Decision : 12-01-1998

Acts Referred:

Orissa Irrigation Act, 1959 — Section 25, 25(1)

Citation : AIR 1998 Ori 156 : (1998) 85 CLT 553

Hon'ble Judges : P.K. Misra, J

Bench : Single Bench

Advocate : Government Advocate, for the Appellant; S. Latif and A.R. Dash, for the Respondent

Final Decision : Dismissed

Judgement

P.K. Misra, J.—State of Orissa represented through the District Collector, Sambalpur, the sole defendant in the trial Court in Money Suit No. 9 of 1984, has filed this appeal against the judgment and decree of the trial Court awarding a sum of Rs. 66,600/- as damages to the plaintiffs with proportionate cost and pendente lite and future interest at the rate of 9 per cent per annum.

2. The two plaintiffs who are respectively father and son had filed the suit claiming Rs. 91,600/- as damages with interest under following circumstances : The plaintiffs claim that they are the owners and occupiers of the disputed lands and they had been raising paddy crops on a portion of the disputed lands and the rest was being used as orchard for raising varieties of fruits and vegetables. In the year 1983-84, the defendant re-constructed the Kalajira Kata of village Ballam by raising the level of water escape as a result of which the disputed lands of the plaintiffs were submerged damaging the crops, fruit-bearing trees and other plants. It is further alleged that the mud-built house collapsed due to storage of water and the (sic)ence was damaged. After serving notice u/s 80. Code of Civil Procedure, on the District Collector, claiming damages the suit was filed.

3. The defendant in the written statement challenged the title of the plaintiffs over the disputed lands. It was further contended that the original structure of the water escape constructed in 1891 had been maintained and further no water had been stored in the Kata during the year 1983-84. It was further alleged that the plaintiffs had lowered the level of their own lands. The assertions regarding damage to the paddy crops, orchard, garden-house et cetera were also denied. Maintainability of the suit was challenged on the ground of non-joinder of parties.

4. On the aforesaid pleadings, the trial Court framed 9 issues relating to title of the plaintiffs, raising of the level of water escape of Kalajira Kata, submersion of the lands of the plaintiffs as well as regarding damages. The trial Court found that the plaintiffs have right, title and interest over the disputed "A" Schedule lands and further negated the plea on the side of the defendant that the level of the "A" Schedule lands had been lowered by the plaintiffs themselves. It was also found that the level of the existing crest (water escape) was raised by one foot and three inches. It was further found that before undertaking such reconstruction, the defendant had not taken any precaution to prevent water-togging of surrounding lands including the lands of the plaintiffs and the plaintiffs' lands were damaged due to such raising of the level of the water escape as the height of the water became more and the water submerged the lands of the plaintiffs. After considering the various evidence on record, on calculation the trial Court found that the plaintiffs were entitled to damages of Rs. 66,600/-. Other technical issues, such as maintainability, limitation et cetera were either not pressed or decided in favour of the plaintiffs and ultimately the suit was decreed as indicated.

5. In this appeal, the learned Government Advocate has only raised one interesting question of law and submitted that the suit was barred under the provisions of Section 25 of the Orissa Irrigation Act, 1959. It has been submitted that there is provision contained in the Act relating to such disputes and as such it must be taken that the jurisdiction of the Civil Court is impliedly barred.

The learned Counsel appearing for the respondents while supporting the other findings of the trial Court has refuted the aforesaid contention.

6. The Orissa Irrigation Act, 1959, as apparent from its preamble, has been enacted to consolidate and amend the laws relating to irrigation, assessment and levy of water rate and cess and to provide for the regulation of use of water from Government source. Section 25 of the Act runs as follows :--

"25. No claim against State Government --

(1) No claim other than by way of remission of water rates shall lie against the State Government in respect of loss caused by the failure or stoppage of water of an irrigation work by reason of any cause beyond the control of the State Government or of any repair, alteration or addition to the irrigation work, or of any measures taken for regulating the proper flow of water therein, or for maintaining the established course of irrigation which is considered necessary.

(2) Claims on account of interruption from other causes -- If the supply of water to any land irrigated from an irrigation work be interrupted otherwise than in the manner specified in the preceding sub-section, the Collector may on application allow such remission as may be considered reasonable and his decision in this regard shall be final."

Sub-section (1) as apparent from the provisions contained therein, does not purport to bar the jurisdiction of the Civil Court in respect of suits for damages filed on account of any tortious action. It only lays down that in the event of any loss caused by the failure or stoppage of water of an irrigation work by reason of any cause beyond the control of the State Government, or by reason of any repair, alteration or addition to the irrigation work, or by reason of any measures taken for regulating the proper flow of water therein, is not actionable and the only remedy of the affected party is to claim a remission of water rates. Subsection (2) provides as to how claims for remission of water rates can be made before the Collector.

In the present case, the cause of action of the plaintiffs is not the loss sustained by the failure or stoppage of water of irrigation work and as such the bar u/s 25 is not at all applicable. The provisions of Section 25 neither expressly or impliedly bar the jurisdiction of the Civil Court to entertain suits for damages on the basis of tortious action of the State. The provisions contained in Chapter V of the Act relates to classification of irrigation works, levy of water-rates and compulsory basic water-rates et cetera and the provision for appeal as contained in Section 29 and for revision as contained in Section 29-A of the Act are relatable to matters determined under Sections 28, 28-A and 28-B which relates to levy of water-rates and compulsory basic water-rates. These provisions, therefore, cannot operate as implied bar to the jurisdiction of the Civil Court to entertain suits of present nature.

7. The present suit is essentially based on tortious action of the defendant. The basis is the negligent action of the State Government while reconstructing the Kata without taking care to prevent submersion of adjacent areas. If the level of the water escape was to be raised, adequate precaution should have been taken by the State Government by raising the height of the bundh of the Kata itself so that other adjacent areas could not have been submerged. The trial Court on discussion of the evidence has found that the defendant had not taken adequate precaution. Such finding regarding negligence has not been challenged at the time of argument in this appeal. Since the action is based on tort committed by the defendant, I do not see as to how the provisions of Section 25 of the Orissa Irrigation Act would be applicable. The provisions contained in the said Act have not provided for determination of any claim for damages arising out of tortious action. The provisions relate to irrigation facilities being extended to various persons and ancillary matters connected therewith. No machinery has been provided under the Act to decide such disputes based on tortious action, nor it comes within the scope of the Orissa Irrigation Act itself. Even though the Kata

was being reconstructed for the purpose of providing better irrigation facilities to the villagers, that by itself cannot exonerate the State from its liability for any damages caused to any person. It is not a case where the lands of the plaintiffs have been submerged due to natural causes. Submersion has taken place solely due to the fact that the height of the water escape had been raised as a result of which the height of the water stored in the Kata became higher and spread over the adjacent lands of the plaintiffs. Therefore, the sole legal contention raised by the Counsel for the appellant is not acceptable.

8. The learned Government Advocate also faintly urged that the plaintiff has no title in respect of lands in village Dallam as described in items (ii), (iii) and (iv) of Schedule A. In support of such contention, he has relied upon the decision of the Supreme Court reported in *State of Orissa v. Brindaban Sharma* as well as the decision of this Court reported in 81 (1996) CLT 571 (FB) (*Smt. Basanli Kumari Saha v. State of Orissa*) which was rendered after the matter came back to High Court on remand pursuant to the aforesaid Supreme Court decision. In the aforesaid decisions, it has been held that even administrative order u/s 8(1) of the Orissa Estates Abolition Act is also revisable by the Board of Revenue in exercise of power u/s 38 of the said Act. I do not see as to how the aforesaid principle of law comes to the rescue of the State Government. In the present case, the order of the Tahsildar recognising the plaintiff as tenant under the State has not been revised. The materials on record as discussed by the trial Court reveal that the plaintiff was tenant under the previous owner and continued to be so after vesting. He has been so recorded in the Record-of-Rights and rent is being accepted by the State Government. No material has been brought on record by the State to come to a conclusion that the plaintiff did not have any right over the said properties. In such view of the matter, I do not find any reason to differ from the findings given by the trial Court on this aspect.

9. No other point having been raised in this appeal, the same is liable to be dismissed. However, in the circumstances, there would be no order as to costs.