

(2017) 12 OHC CK 0085

In the Orissa High Court

Case No : 64 of 1991

Subal Chandra Jena and others

APPELLANT

Vs

Gopal Mohapatra and others

RESPONDENT

Date of Decision : 18-12-2017

Acts Referred:

[Orissa Prevention of Land Encroachment Act, 1972](#), [Section 6](#)

Citation : (2017) 12 OHC CK 0085

Hon'ble Judges : A.K.Rath

Bench : SINGLE BENCH

Advocate : R.K.Mohanty, Kalayan Mohapatra

Judgement

1. This is a plaintiff's appeal against confirming judgment.
2. Sanatana Jena, the predecessor-in-interest of the appellants as plaintiff instituted the suit for recovery of possession and permanent injunction. The case of the plaintiff was that the suit land originally belonged to Bikari Charan Naik. After his death, his successors sold the same to the father of the plaintiff by means of two sale deeds dated 3.11.37 and 15.2.38 and delivered possession to him. While the matter stood thus, the Tahasildar, Bhadrak initiated Encroachment Case No.39 of 1966 against him. He instituted Title Suit No.21 of 1968-I in the court of the learned Subordinate Judge, Bhadrak against the Tahasildar and State of Orissa for declaration of title. The suit was decreed. Thereafter the defendants along with another person constructed a hut over the suit land on 21.4.1972 and removed the bricks stacked by the plaintiff. With this factual scenario, he instituted the suit seeking the relief mentioned supra.
3. The defendants entered contest and filed written statement denying the assertions made in the plaint. According to them, hut was raised by the brother of defendant-1 more than 12 years back. Encroachment Case No.14 of 72 was initiated by the Tahasildar against him. The land was settled with him on receipt of penalty and back rent. They denied to have made any construction of pucca

house over the suit land. The plaintiff has no semblance of right, title and interest over the same.

4. On the inter se pleadings of the parties, the learned trial court framed seven issues. The parties led evidence. The learned trial court came to hold that the plaintiff has no title over the suit land. He has no right to evict the defendants from the suit land. Held so, it dismissed the suit. The unsuccessful plaintiff assailed the judgment and decree of the learned trial court before the learned District Judge, Bhadrak, which was subsequently transferred to the court of the learned Additional District Judge, Bhadrak and renumbered as T.A.No.19 of 1983/77 of 87. The same was eventually dismissed. It is apt to state here that during pendency of the appeal, the sole plaintiff died, whereafter his legal heirs have been substituted.

5. The appeal was admitted on the following substantial questions of law : "1. Whether the decision of the previous suit (Ext.5) confers full and exclusive right, title, interest and possession on the plaintiffs-appellants in respect of suit plot no.300 ?

2. Whether the learned courts below were justified in refusing the relief of recovery of possession when the defendants-respondents do not make out any independent title of claim under the State which has admittedly lost all interest vide Ext.5 ?

3. Whether the learned courts below are justified in dismissing the suit in view of the judgment of the learned Addl. District Judge, Bhadrak in T.A.No.19 of 1983/77 of 1987 that the plaintiff is a lessee under the Government ?"

6. Heard Mr.Ramakanta Mohanty, learned Senior Advocate along with Mr.Kalyan Mohapatra, learned Advocate for the appellants. None appeared for the respondents.

7. Mr.Mohanty, learned Senior Advocate for the appellants submitted that plaintiff was the owner of the suit property. He was in possession of the same. The Tahasildar, Bhadrak initiated Encroachment Case No.38 of 1966 against him. He filed T.S.No.21 of 1968-I in the court of the learned Subordinate Judge, Bhadrak for declaration that Encroachment Case No.48 of 1966 initiated against him under Section 6 of the Orissa Prevention of Land Encroachment Act (O.P.L.E.Act) is illegal and arbitrary. The suit was decreed on 10.9.1971, vide Ext.5. The defendants have no semblance of right, title and interest over the same. When the defendants encroached upon a portion of the suit land, the suit was instituted. As a matter of fact, the previous decree passed in T.S.No.21 of 1968-I has been misconstrued. In the said suit, it was held that the plaintiff is a lessee. In view of the said decree, the plaintiff became the owner of the suit plot.

8. The plaintiff instituted T.S.No.21 of 1968-I in the court of the learned Subordinate Judge, Bhadrak for declaration that Encroachment Case No.48 of 1966 initiated against him under Section 6 of the O.P.L.E. Act is illegal and

arbitrary in respect of the self-same land. In issue no.3, the learned trial court came to hold that the suit land belonged to Irrigation Department of Government of Orissa, which is under the management and control of the Collector, Balasore. The plaintiff was a lessee. A portion of the suit land was nala (nayanjudi). The proceedings under the O.P.L.E.Act is void in view of the decision of this Court in the case of Padmanav Pradhan and others Vrs. State of Orissa and others, 1971(2) C.W.R. 338. The defendants cannot resort to the provisions O.P.L.E.Act to evict the plaintiff. Held so, it decreed the suit. The decision of the learned trial court, vide Ext.5, cannot be pressed into service to show that the plaintiff was a lessee. The suit was decreed on the ground that the provisions of O.P.L.E. Act are ultra virus. The suit was not for declaration of title. Since the suit was decreed, there was no occasion for the State of Orissa to file appeal.

9. Admittedly, the suit land belongs to the State Government. The State is a necessary party. No prayer has been made in the suit for declaration of title. The suit for eviction of the defendants is misconceived. The substantial questions of law are answered accordingly.

10. In the wake of the aforesaid, the appeal sans merit deserves dismissal. Accordingly, the appeal is dismissed. No costs.