
(1970) 01 OHC CK 0029
In the Orissa High Court
Case No : Civil Revision No. 69 of 1968

Sukha Dev Nahako and Another	Vs	APPELLANT
Mahant Sri Gopal Das		RESPONDENT

Date of Decision : 12-01-1970

Acts Referred:

Evidence Act, 1872 — Section 134
Orissa Tenants Relief Act, 1955 — Section 11A(6), 6
Stamp Act, 1899 — Section 36

Citation : (1970) 36 CLT 1099

Hon'ble Judges : G.K. Misra, C.J

Bench : Single Bench

Advocate : D. Mohanty and P.C. Mohapatra, for the Appellant; Srinivas Misra and S.C. Misra, for the Respondent

Final Decision : Dismissed

Judgement

G.K. Misra, C.J.—The disputed lands constitute the following items:

- (1) Patta No. 50, Survey No. 453/2, Area. 1.73 ac.
- (2) Patta No. 51, Survey No. 456/2 Area a74 ac. 2.47 ac.
- (3) Karni Inam:-Survey No. 420 Area. (sic) ac. Area. 2.26 ac 2.43

The claim of the Petitioners was that they were bhag tenants under, the opposite party. An application was filed u/s 6 of the Orissa Tenants Relief Act, 1955, for depositing rent in cash. As the landlord did not accept the same the rent has been kept in deposit. As the opposite party raised an objection that the Petitioners are not tenants under him, the question was examined.

2. The O.T.R. collector held that the Petitioners were tenants under the opposite party. The first and second appellate authorities however accepted the case of the landlord and dismissed the tenants' application. This revision has been filed u/s 11-A(6) of the Act, whereupon the High Court may, on any question of law,

raised in an application for revision by any person aggrieved by the order of the Revenue Divisional Commissioner under Sub-section (4) or Sub-section (5), filed within 60 days from the date of the said order, revise the same and confirm, reverse or modify the said order according as the Court thinks proper. This is how the revision has come before this Court.

3. In the course of arguments, Mr. Mohanty did not seriously press the case the Petitioners in respect of Survey Nos. 420 and 421 described as Katani Inam. The revision is accordingly dismissed in respect of these two Survey Nos.

4. The question for consideration is whether the Petitioners are tenants under the opposite parties in respect of the residual lands. The claim of the Petitioners was rejected on the ground that the rent receipts exts. 1 and 2 filed by the Petitioners did not connect them with patta Nos. 50 and 51, and further those documents were not proved to be genuine, though the O.T.R. Collector had accepted them to be genuine.

5. The first and second appellate authorities committed an error of law in coming to the conclusion that exts. 1 and 2 are not genuine. Both these documents bear the signature of the opposite party, Mahant Gopal Das, but as he disputed the genuineness of the same it was sent to the Handwriting Expert (p.w. 6) who was clearly of opinion that the two documents bear the signatures of the opposite party. Further more the attester (p.w. 4) was examined in relation to Ext. 1 and depend to its execution and genuineness. Similarly, p.w. 2 spoke of execution of ext 2 by the Petitioners. The two appellate authorities discarded these two documents, firstly on the ground that they were not stamped. No such objection was raised before the O.T.R. Collector. u/s 36 of the Stamp Act, unless, such an objection had been raised at the earliest stage of the trial, further objection on that score is not tenable. The appellate authorities therefore acted contrary to law in holding that these two documents are not proved on the ground that they were unstamped. The first appellate authority discarded the documents as the second attester was not examined in each case. Here also he committed an error of law. It is the duty of the Court sifting evidence to find out whether the attester already examined is believable or not. If his evidence is acceptable, it cannot be discarded merely because other attestors available were not examined. Section 134 of the Evidence Act clearly lays down that no particular number of witnesses need be examined for proving a case. The duty of the first appellate authority was to examine the intrinsic character of the attestors examined. It was open to it to say that they were not believable. It does not discard their evidence on that ground, but only on the ground that the corroborating attester was not examined.

6. The second appellate did not go into this question. I am satisfied on a consideration of the materials on record that the two appellate authorities were not alive to the law in question and acted contrary to law in rejecting exts. 1 and 2.

7. The next question for consideration is whether the lands refer to the disputed

lands in patta Nos. 50 and 51.

The registered kabala (Ext. 38) describes the land in patta No. 50 bearing survey No. 453/2 as Baishnab Bali and Kina Bhumi. Similarly, ext. A the registered sale deed dated 16-11-1935 describes the lands in patta No. 51 bearing survey No. 456/2 as Bhajan Mahanti Padar. Ext. 1 relates to Baishnab Bali and Kina Bhumi while ext. 2 speaks of Bhajan Mohanti Podar. The identity of the lands is therefore established. The first and second appellate Courts acted contrary to law in overlooking these important features in coming to the conclusion that the identity of the lands was not established.

8. It is unnecessary to look into the other documents in the case. If these two documents are accepted as genuine and to have been duly executed by the opposite party, then the case of the Petitioners is established that they were bhag tenants under the opposite party in respect of patta Nos. 50 and 51 with a total area of 2.47 acres.

9. In the result, the civil revision succeeds in respect of Survey No. 453/2 in patta No. 50 with an area of 1.63 acres and Survey No. 456/2 in pat to No. 51 with an area of a 74 acres. It is dismissed with regard to survey Nos. 420 and 421 with a total area of 2.43 acres described as Karni Inam. In the circumstances, parties will bear their own costs.