
(1986) 07 OHC CK 0037
In the Orissa High Court
Case No : Second Appeal No. 207 of 1979

Sundar Oram and Others	Vs	APPELLANT
Budhua Oram and Another		RESPONDENT

Date of Decision : 14-07-1986

Acts Referred:

Orissa Government Land Settlement Act, 1962 — Section 2, 3
Orissa Prevention of Land Encroachment Act, 1972 — Section 7

Citation : (1986) 62 CLT 692

Hon'ble Judges : L. Rath, J

Bench : Single Bench

Advocate : P.K. Misra and N.C. Pati, for the Appellant; Y.K. Mohanty, for the Respondent

Final Decision : Dismissed

Judgement

L. Rath, J.—This is an appeal against a confirming judgment of the Subordinate Judge, Rourkela in a suit instituted for declaration of title, confirmation of possession or in alternative for recovery of possession in respect of Ac.4.19 decimals of land.

2. Briefly stated, the Plaintiff-Respondent No. 1 instituted the suit making the averment that he belongs to the aboriginal tribe of Oram community and had no land sufficient for agricultural purposes and as such he had reclaimed the suit land which was originally Government Anabadi land and after reclaiming had started cultivating the same. During the major settlement operations an encroachment case was stated against the Respondent No. 1 since he was in possession of the suit land. He appeared before the settlement authorities and in that encroachment case the land was settled with him on raiyati status, on his paying the full demand. Thereafter draft R.O.R. was granted in his favour. Final R.O.R. published with effect from 1-4-1976 also shows him recorded as the Raiyat in respect of the suit land. As the Defendants i.e., Respondents 2, 3, 4, 5 & 6 and the father of Respondent No. 7 as also the Respondent No. 2 illegally

trespassed over the suit land on or about 15th of March, 1974 and were laying false claims with the settlement authorities which cast cloud over the right, title and interest of the Plaintiff-Respondent No. 1, he was obliged to file the suit for the reliefs as above. The suit was contested by the Defendants by filing a joint written statement contending that the Respondent No. 1 had no insufficient land for agricultural purposes and that he had not reclaimed or cultivated the suit land and had also not possessed the suit land, It was the case of the Defendants that the Plaintiff had left the suit village since the time of his marriage and was living in his father-in-law's house at another village and had joined service in the H.S.L., Rourkela and that only in 1976 after parcha was received by the Plaintiff be raised a hut in the suit village and laid a false claim over the suit land.

The Defendants also stated that the suit land was wrongly recorded in the name of Alpesh Gram which was corrected on the basis of objection raised by the Defendants and the Defendants had been given the understanding by the settlement authorities that they would initiate encroachment proceedings against the Defendants. But the Plaintiff behind the back of the Defendants influenced the settlement authorities and managed to initiate encroachment proceedings against him and by giving fine etc., got his name recorded and obtained the draft R.O.R. Though his name was so recorded, yet he was not in possession of the same or any part or parcel of the suit land. After coming to know that the draft R.O.R. was issued in the name of the Plaintiff, the Defendants objected before the settlement authorities on 4-4-1966 and even thereafter. But however such authorities without considering the matter in its proper perspective and without referring to past records illegally and without any basis published the final R.O.R. in the name of the Plaintiff and entered in the remarks column the names of Defendants 1 and 2 and deceased Nicholas Oram as being forcible occupants. The Defendants also claimed to be all along in cultivating possession and enjoyment of the suit land since 1954.

3. On a detailed consideration of the evidence both oral and documentary, the learned trial court came to the finding that the Respondent No. 1 had right, title and interest over the suit land and was in possession of the suit land till only 3 to 4 years prior to the suit, and hence decreed the suit directing the Defendants 1, 2 and 4 (Appellant No. 1 father of Appellant No. 7 and Respondent No. 3) to deliver possession of the suit land to the Plaintiff. In appeal the learned Subordinate Judge, Rourkela also confirmed the finding that the Plaintiff was in possession of the land in question and that the Defendant had entered upon the suit land only 3 to 4 years prior to the suit. The learned lower appellate court further found that the land was validly settled in favour of the Plaintiff and the Government had continued as the owner of the land till such settlement, and that it was not the case that the Defendants by long possession for more than the statutory period had acquired title over the suit land by prescription. The appeal was accordingly dismissed. The judgment of the courts below is challenged before me on the ground that the disputed land being Government Anabadi land, the Assistant Settlement Officer had no authority to settle the land

with the Plaintiff and that the order passed being illegal and void, the Plaintiff had no right over the disputed land.

4. Admittedly, it is the Appellants' case that the Plaintiff behind their back influenced the settlement authorities and managed to get the encroachment case started against him and by giving fine etc. got his name recorded and obtained the draft Record-of-rights and further the final record of rights has also been granted in the name of the Plaintiff though in the remarks column the Defendants 1 and 2 and the deceased Nicholas Oram are shown as the forcible occupants. Ext. C filed by the Defendants-Appellants which is the same document as Ext. 6 filed by Respondent No. 1, shows that by order dated 4-11-1968 in suit on 1/22 the Assistant Settlement Officer directed to record the land in the name of Respondent No. 1 with raiyati rights. Evidently this was a settlement made in favour of the Plaintiff and the Plaintiff claims title to the land on the basis of this document which was later on recognised in the record of rights Ext. 4. It is contended by the Appellants that an Assistant Settlement Officer had no authority to settle the land in favour of the Plaintiff and hence the Plaintiff had got no title through such settlement. Discussing the question, the learned lower appellate court has stated that in Orissa Government Land Settlement Act, 1962 (Orissa Act 33 of 1962), Section 2(e) defines a Tahasildar to be any officer appointed as an Assistant Settlement Officer under the Orissa Survey and Settlement Act, 1958. The learned Subordinate Judge has further placed reliance on letter No. 61562-G.E. (G1) 24/62-R dated 23-12.1962 from the Deputy Secretary to Government, Orissa to the Board of Revenue which has been printed at page 73 of the book law relating to Government Land (Orissa) compiled by Sri Raghunath Das, Advocate, Cuttack. He has placed reliance on paragraph 12(4) of the letter to state that the settlement authorities are empowered to dispose of the lease and encroachment cases and that all pending lease and encroachment cases should be transferred to the settlement organisation. The learned Subordinate Judge has also further placed reliance on the Orissa Government Land Settlement Rules, 1963 in which it is provided that the expression Assistant Settlement Officer shall have the same meanings as are respectively assigned to them under the Orissa Survey and Settlement Act, 1958. The learned Judge accordingly held that an Assistant Settlement Officer would be a Tahasildar for the purpose of the settlement and was empowered to settle Government land in favour of persons entitled to such settlement.

5. The only question raised attacking the judgment is that the settlement in favour of the Plaintiff by the Assistant Settlement Officer under Ext. C was illegal since he was not a Tahasildar and did not have any authority to make such settlement. Admittedly under the provisions of Orissa Prevention of Land Encroachment Act, 1953 (Orissa Act 15 of 1954) there was no provision for settlement of encroached lands and the functionary designated under that Act to take steps under the different provisions of the Act were the Collector or Deputy Collector or the Sub-Deputy Collector, as the case may be. The 1953 Act stood repealed by the Orissa Prevention of Land Encroachment Act, 1972 (Orissa Act VI

of 1972) wherein provision was made not to take action for eviction under certain circumstances and thereafter the Act was amended in 1976 to provide u/s 7 thereof that under certain contingencies instead of eviction the Tahasildar may settle the land with the encroacher. However, these provisions are of no help so far as settlement of the land with the Plaintiff is concerned since the impugned settlement was done in 1968. The other enactment in the field is the Orissa Government Land Settlement Act, 1962 where in Section 3(e) authorised the Government to authorise any officer not below the rank of Tahasildar to dispose of the applications for settlement of lands and to settle the same in such manner as may be prescribed. Thus, the act authorised a settlement to be made by a Tahasildar or officers above him. The definition of the word "Tahasildar" in Section 2(e) to mean, any officer appointed as an Assistant Settlement Officer under the Orissa Survey and Settlement Act, 1958 which has also been referred to the Additional Subordinate Judge came only by way of amendment by Orissa Act 23 of 1973 and hence the Assistant Settlement Officer was not authorised to act as the Tahasildar under the Orissa Government Land Settlement Act, until the amendment of 1973. Thus, the learned Subordinate Judge was in error to rely upon the definition of the word Tahasildar in Section 2(e) of the Orissa Government Land Settlement Act, 1962.

6. Thus, apparently the Assistant Settlement Officer were not authorised to settle the lands either under the provisions of the Orissa Prevention of Land Encroachment Act, 1953 or Orissa Government Land Settlement Act, 1962.

7. However, as has been rightly relied upon by the learned Subordinate Judge, the power to settle such land was vested in the Assistant Settlement Officers in the Approved lease principles communicated in letter No. 48597-R dated 26th October, 1961 which was amended by letter No. 61562-G.E. (G1)-24/62-R dated 23-12-1962 from the Deputy Secretary to Government of Orissa to the Board of Revenue, Paragraph 12(4) of the letter provided that where settlement operations are in progress the Assistant Settlement Officers are empowered to receive applications for lease and all pending lease and encroachment cases should be transferred to the settlement organisation. The matter was further claimed in paragraph 5 of the second letter in which it was stated that the settlement authorities should be empowered to dispose of the lease and encroachment case and all pending lease and encroachment cases should be transferred to the settlement organisation and the suggestion that where attestation, objection hearing and all other subsequent stages of work are in progress, the settlement authorities can do the work. But in areas where attestation stage has not been reached and where there is no Settlement operations going on, the Collector should do it. Thus under the provisions of the aforesaid letters the Assistant Settlement Officers were authorised to settle the land in favour of the Plaintiff.

8. These letters of the Government were addressed to the Board of Revenue and have become known as "The Approved lease principles." These are general

directives of the Government regarding settlement of Government lands. These Approved lease principles have become well-known as the directive and guide lines prescribed by the Government in the matter and have acquired sufficient notoriety to attract judicial notice thereof. I am thus prepared to take judicial notice of the existence of these letters authorising the Assistant Settlement Officers to deal with the applications of the Plaintiff for settlement of the land. Hence, I am in full agreement with the courts below that the land was validly settled with the Plaintiff and he acquired the right, title and interest in respect of the land.

9. As a matter of fact the Plaintiff is entitled to the decree even otherwise on the basis of his prior possession alone. It is concurrent finding of fact that the Plaintiff was in possession of the suit land continuously before 3 to 4 years prior to the suit and thus even without any valid settlement in his favour, the Plaintiff would have a possessory title to the land which is valid against the whole world except the true owner that is the Government, and the Defendants being admittedly subsequent trespassers are liable to be evicted from the land, I have recently decided in a case in Bhaiga Pradhan v. Iswar Adhikari and Anr. Second Appeal No. 173 of 1979 - D/27-6-1986, that a person is entitled to a decree on prior possession alone. The Respondent No. 1 having thus established his right, title and interest in the land, is entitled to bring the suit for eviction of the Defendants-Appellants.

In the result, the appeal has no merit and is dismissed with costs.