
(1955) 03 OHC CK 0014
In the Orissa High Court
Case No : Second Appeal No. 345 of 52

Syed Nooran Nabi and Others

APPELLANT

Vs

Pitamber Mohapatra and Others

RESPONDENT

Date of Decision : 23-03-1955

Acts Referred:

Citation : (1956) 22 CLT 510

Hon'ble Judges : Mohapatra, J

Bench : Single Bench

Advocate : B.N. Das and J.M. Mitra, for the Appellant; N. Mukherji, for the Respondent

Final Decision : Dismissed

Judgement

Mohapatra, J.—The unsuccessful Plaintiffs in both the Courts below have brought this second appeal arising out of a suit for declaration of title and eviction of the Defendants from the disputed property with a house and an adjoining Bari appertaining to C.S. plot Nos. 806, 807 and 808. The Plaintiffs' short case is that the original Defendant who was the father of the present Respondent; 1 to 3 and husband of Respondent No. 4. was in occupation of the disputed property as a service tenure-holder for the purpose of supplying rags to be used as wicks to be burnt before Kadam Rasool, a Muhammedan institution situate in the town of Cuttack, and further that the original Defendant and after him his successors had ceased to perform the service, and as such, the Plaintiffs are entitled to evict the present Defendants as under the terms of the grant they are evictable on account of non-performance of the service. The main defence is that the Defendants are not evictable as they have permanent tenancy rights in respect of the land in dispute.

2. The law on the question of service tenures is well settled by reference to several decisions of their Lordships of the Privy Council and few decisions of our Court. I will simply remain satisfied by referring to the decision of their Lordships of the Privy Council in the case of Lakhamagouda v. Baswantrao AIR 1931 P.O.

157, where their Lordships held "There is distinction between the grant of an office to be remunerated by the use of land and the grant of land burdened with service. In the former case the land will prima-facie be reasonable; in the latter Case prima facie it will not: but the terms of the grant or the circumstances in which it was made may establish a condition of the grant that it was reasonable. The onus will be upon the grantor to make out such a condition." These two varieties of service tenures are well recognised and the principle is indisputable that when the Plaintiff-landlord comes with a suit for ejectment on the basis that the Defendants are liable to be evicted on account of the non-performance of the service, the onus is upon the Plaintiff to prove that in fact the grant of the service tenure was a resumable grant. In the present case, there is no grant forthcoming. It is lost in antiquity. The fact remains that the original Defendant and his ancestors were in possession of the disputed property for a very long time. It has been found as is a matter of fact also by both the courts that they had constructed the house standing on the disputed land. The Defendants manifestly therefore, since the time of their ancestors, were using the house for their residential purpose. On a careful examination of all the facts and circumstances arising in the case, the lower appellate Court has given us the benefit of the finding that the landlord-Plaintiff has not been able to prove that the present Case is a case of resumable grant on account of cessation of the service.

3. It will be pertinent to describe here as to how the disputed property was recorded in the last two settlements. In the provincial settlement, Kashi, the ancestor of Jagannath (the original Defendant) was recorded as Pattadar. It was noted there that the tenant was not to pay rental as he was supplying rags for being prepared into wicks for Kadam Rasool, that is, the Muhammedan Mosque. In the current settlement, however, the incidence of the tenure has been described as Jagir. It has been further noted that the Defendants were to supply rags for the preparation of wicks to be burnt before Kadam Rasool. Jagannath the original Defendant had not been described as Pattadar in the current settlement.

4. Mr. Das, appearing on behalf of the Appellants, lays much stress upon the fact that the current settlement record of rights must prevail as against provincial settlement record of rights. Even if the entries in current settlement prevail, they do not carry us any further than the position that it is a case of service-tenure. But that apart, there is no other evidence to definitely lead to the conclusion that it is of resumable type and that the Defendants are liable to evict the land for the reason that they had ceased to perform the required service. The lower appellate court, as a court of fact, after attaching the presumptive value of the current settlement record-of-rights, has, however, in view of the surrounding circumstances, come to the conclusion that the grant was only to the effect that the Defendants were to hold the land in dispute free from rent so long as they would render service.

5. In conclusion, therefore, in any view of the case, when the Plaintiffs have failed to prove resumable character of the service-tenure, the present suit for eviction is bound to be dismissed. If the Plaintiffs have any further right of assessment of fair and equitable rent on account of the Defendants having ceased to render the requisite services, such a right will not be affected by the decision in -the present suit. The appeal fails and is dismissed and the suit for eviction is dismissed-. The decree for costs of the courts below will be maintained; but there will be no order as to costs of this Court.

6. Appeal dismissed.