

**(1960) 02 OHC CK 0015**

**In the Orissa High Court**

**Case No : Second Appeal No. 208 of 1958**

Tadepalli Sivaramayya and Another

APPELLANT

Vs

Bhoroto Porida and Another

RESPONDENT

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**Date of Decision :** 11-02-1960

**Acts Referred:**

Civil Procedure Code, 1908 (CPC) — Order 20 Rule 12, Order 41 Rule 22  
Orissa Tenants Relief Act, 1955 — Section 2 , 3(1)

**Citation :** (1960) 26 CLT 245

**Hon'ble Judges :** Mohapatra, J

**Bench :** Single Bench

**Advocate :** G.K. Misra and S.C. Mohapatra, for the Appellant; H.G. Panda, for the Respondent

**Final Decision :** Allowed

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## **Judgement**

Mohapatra, J.—The Plaintiffs are the Appellants against the confirming judgment of the lower appellate Court arising out of a suit brought for ejectment of the Defendants on the declaration of Plaintiffs' title and on a further declaration that the Defendants are mere trespassers. The Defendants are the sons of one Gong Porida. The Plaintiffs' version is that Gonga was a yearly tenant in his personal capacity in the end of the agricultural year of 1955-56, that is, till 26th March 1956. Gonga died on 19th May 1956; therefore, the Defendants, who are the sons of Gonga, are squatting on the lands in dispute as mere trespassers. So the present suit for ejectment. The defence was that the Defendants are tenants of the Plaintiffs and they had occupancy rights and further that the co-parcenary was a tenant.

2. The trial Court found that Gonga Porida was merely an annual tenant purely on the basis of a personal contract. The Defendants were never parties to the contract. Gonga had no occupancy rights as the lands in dispute are Government jeraiti lands and the Plaintiffs alone have occupancy rights. It was further held that the Defendants have no interest in the lands in dispute. But he dismissed

the Plaintiff" suit on the ground that the Civil Court had no jurisdiction to entertain such a suit and the suit is triable by the Revenue Courts as provided in Orissa Tenants Relief Act, 1955.

3. The Plaintiffs came up in appeal before the District Judge who also dismissed the Plaintiffs' suit on confirming the findings of the trial Court that the Civil Court had no jurisdiction. He particularly relied upon the Bench decision of this Court reported in Pandab Bissoyi and Others Vs. Magiti Sasamal, . Regarding the other findings of the trial Court, the learned District Judge had expressed himself in a very serious language. When the Respondents' lawyer wanted to challenge the findings of the trial Court, the lower appellate Court did not allow him to argue as he had not filed a cross-objection under the provisions of Order 41, Rule 22, Code of Civil Procedure. As the decree was in favour of the Defendants, they were not under any obligation whatsoever to file any cross-appeal or cross-objection. They could challenge the findings of the trial Court while supporting the decree. The lower appellate Court went wrong in disallowing the learned advocate on behalf of the Respondents to urge his argument against the findings of the trial Court.

4. But I find, on a careful perusal of the judgment of the trial Court and after bearing Mr. Panda, appearing on behalf of the Respondents, there is no merit in the contention of the Respondents to challenge the findings of the trial Court. Manifestly these are Government jeraiti lands and Gonga could have no occupancy rights, Gonga was introduced to the disputed lands as tenant on the basis of annual Muchalikas. Ex. 1 is the latest one. It is manifest from Ex. 1 that it was purely a personal contract for an annual tenancy. That Gonga was an annual tenant only was not even specifically denied by the Defendants. So in my view, the findings of the trial Court are unassailable and must be confirmed.

5. But the question remains whether the Civil Court can have jurisdiction to entertain a suit of this nature. The division Bench decision, referred to above, says that the Court ought to carefully go through the pleadings while determining the jurisdiction. In the particular case before me, as I have indicated above, the Defendants not having denied the position that Gonga was purely an annual tenant, it appears clear that the tenancy is neither heritable nor transferable. On that basis, the Defendants become mere trespassers. There is no denial of the pleadings that on execution of the Muchalikas, the tenancy comes into existence as between the landlord and Gonga. The Muchalikas themselves make the position manifest that it was a personal contract and the sons have nothing to do in the matter. It should be mentioned here, the Muchalikas were mentioned in the plaint and filed with the plaint, as such they formed a part of the pleadings. I must also observe that I cannot read this Bench decision to the extent that as soon as there is a single line in the written statement asserting that he is a tenant, the jurisdiction of the Civil Court is ousted. When the manifest position arises that the Defendants are trespassers, the Civil Court must have jurisdiction to evict the trespassers and give relief to the plaintiffs which is not within the

jurisdiction of the Revenue Court.

6. It is to be observed that neither the Transfer of Property Act nor the Tenants Relief Act makes any provision making the annual tenancy rights which are purely of a personal character heritable or transferable. It is undoubtedly a personal privilege given to the tenant himself. Mr. Panda, however, draws my attention to the definition of the word "tenant" given in the tenants Relief Act in Section 2, Clause (j) which runs as follows:

"Tenant" means a person who under the system generally known as Bhag, Sanja or Kata or such similar expression, or under any other system, law, contract, custom or usage cultivates the land of another person on payment of or in cash or in kind or in both or on condition of delivering to that person:

(i) either a share of the produce of such land, or (ii) The estimated value of a portion of the crop raised on the land, or (iii) a fixed quantity of produce irrespective of the yield from the land, or

(iv) produce or its estimated value partly in anyone of the ways described above and partly in another.

Exceptions-The following persons shall not be deemed to be tenants within the meaning of this definition:

1. A member of the landlord's family;
2. a servant or hired labourer, cultivating the land under the personal supervision of the landlord or any member of his family on payment of wages in cash or in kind but not by way of a share in the produce of the land; and 3, a person holding land directly under Government with permanent and heritable rights of cultivation therein on payment of rent either wholly or partly in cash.

The entire definition is on the assumption that there is some privity between the two persons who are parties to the contract. By no stretch of imagination this definition can be suggestive of inclusion of a trespasser Mr. Panda also has drawn my attention to Section 3(1)(a) running to the effect: "no tenant in lawful cultivation of any land on the 1st day of July 1954 or at any time thereafter shall be liable to be evicted from such land by the landlord."

This lawful cultivation indicates only cultivation by a tenant and cannot be elastic enough to include cultivation by a trespasser. Even I will go further to suggest that it cannot be inclusive of possession of the servant or assistant of the tenant.

The servant of a tenant, who is helping the tenant in the matter of cultivation, cannot claim protection under the provisions of Section 3(1)(a) of the Tenants Relief Act On account of the aforesaid reasons, therefore, I feel convinced that the Civil Court has jurisdiction to entertain the suit that the Defendants, being out and out trespassers, are liable to be evicted, as prayed for by the Plaintiffs.

7. The Plaintiffs' suit for possession, therefore, be decreed and the matter of

mesne profits, as prayed for in the plaint, is to be determined, on inquiry by the trial Court, in accordance with law, under the provisions of. Order 20, Rule 12 of the Code of Civil Procedure. The decrees passed by the Courts below are set aside; but in the circumstances, the parties are to bear their own costs throughout. Appeal allowed.