

HIGH COURT OF ORISSA: CUTTACK.

F.A. NO.350 of 1990

From the judgment and decree dated 28.6.1990 passed by Shri S.K. Pradhan, Subordinate Judge, Bhubaneswar in Title Suit No.165 of 1984.

Bansidhar Jena and others Appellants

- Versus-

State of Orissa,
represented through
Collector, Puri and another Respondents

For Appellants : Sri Banamali Mohanty,
Bidhayak Patnaik and M. Badu

For Respondents : Advocate General
and Addl. Standing Counsel

PRESENT:

THE HONOURABLE SHRI JUSTICE B.K. PATEL

Date of hearing – 20.12.2012 :: Date of judgment – 18.1.2013

B.K. PATEL, J. Unsuccessful plaintiffs are in appeal against the judgment and decree dated 28.6.1990 passed by learned Subordinate Judge (now Civil Judge (Senior Division), Bhubaneswar in Title Suit No.165 of 1984, a suit for declaration of occupancy status over the suit land or, in alternative, for declaration of right, title and interest over the suit land by adverse possession.

2. Plaintiffs' case is that the suit land originally appertained to Anabadi Holding of Killa- Patia as per the C.S. Record of Rights published in the year 1931. Plaintiffs were settled Rayats of village Patia and tenants under the Raja of Patia. Plaintiff nos.1 to 4 and plaintiff no.5's brother late Ganeswar Jena reclaimed the suit land by clearing the jungle and wild growths, made the suit land fit for cultivation and remained in continuous and peaceful possession over the suit land by raising different crops and vegetables since long. After death of Ganeswar Jena, the plaintiffs continued to be in peaceful, undisturbed and continuous possession over the suit land. The Estate of Patia was purchased by Raja of Kanika in an auction sale in 1931 and as such the Raja of Kanika became the proprietor in respect of Estate of Patia including the suit land. The plaintiffs being the settled Rayats of the suit village, thus, acquired valid title in respect of the suit land in 1943 since when they are in possession over the suit land and are paying rent to and obtaining rent receipts from the Raja of Kanika. However, during Hal settlement operation the suit land was wrongly recorded in Government Rakhit Holding. After final publication of the Hal Records of Rights the defendants who represent the State Government, contemplated to lease out the suit land in favour of outsiders. Hence, the suit.

3. Defendants filed written statement denying plaintiffs' assertions. Defendants resist plaintiffs' assertion to have reclaimed the suit land and to have been in possession over the same or to have acquired occupancy right over the suit land. It is pleaded that the plaintiffs were never in possession over the suit land. Defendants also deny that the plaintiffs were settled Rayats of village Patia.

4. Considering the rival pleadings, following issues were settled by the trial court:-

- (i). Is the suit maintainable as laid?
- (ii). Is there any cause of action to bring the suit?
- (iii). Whether the plaintiffs have acquired occupancy status in respect of the suit land or have acquired the occupancy status by adverse possession?
- (iv). To what relief/reliefs the plaintiffs are entitled to?

5. In order to substantiate their case, plaintiffs examined five witnesses including plaintiff no.1 as P.W.1 and also placed reliance on the documents marked Exts.1 to 17. No evidence oral or documentary was adduced on behalf of the defendants.

6. On an appraisal of evidence on record, in answering the vital issue no.(iii), the trial court held the plaintiffs to have failed to establish that they are in possession over the suit land at any point of time since 1943 or to have acquired any occupancy

status or any title by way of adverse possession over the suit land. Accordingly, the suit was dismissed.

7. In assailing the impugned judgment and decree it is submitted by the learned counsel for the appellants that plaintiffs' claim for declaration of right, title and interest over the suit land is hinged on the claim of acquisition of occupancy right being in cultivating possession for more than the statutory period. In order to substantiate their case plaintiffs not only placed reliance on the rent receipts Exts.1, 1/A and 1/B but also on Ext.17, the deed of settlement. Ext.17 was proved by P.W.5, an Amin who was working under Sarbeswar Mishra, the then Tahasildar of Kanika Estate. That apart, plaintiffs' assertion of possession over the suit land were proved by evidence of P.W.1 which is corroborated by evidence of P.Ws. 2,3 and 4. Trial court committed gross error in appreciation of evidence in disbelieving documentary as well as oral evidence on behalf of the plaintiffs. It was contended that though P.W.1 himself stated to have not been granted any patta from the Kanika Estate and even if for the shake of argument Ext.17 is ignored, plaintiffs having proved payment of rent to the officers of Kanika Estate and grant of receipts under Ext.1 series trial court ought to have held the plaintiffs who were settled Rayats of the village to have acquired status of occupancy Rayats

in respect of the suit land. Placing reliance on the decisions of this Court in **Jagannath Nanda vs. Bishnu Dalei and others**: XL (1974) CLT 888 and **The Collector of Puri representing the State of Orissa vs. Budhinath Samantray and another**: XXXV (1969) CLT 552, it was contended that a formal document is not necessary to create agricultural tenancy and a tenant can be inducted to an agricultural holding by mere acceptance of rent whereafter he would acquire the status of a tenant. It was further argued that trial court should have accepted evidence of P.Ws. 2 to 4 with regard to possession of the plaintiffs over the suit land especially when no evidence was adduced from the side of the defendants.

8. In reply, learned counsel for the State appearing for the respondents contended that on a carefully appreciation of evidence on record trial court has rightly held the rent receipts Exts.1 series to be forged in view of the fact that though Estate of Kanika vested in the State on 27.11.1952, as admitted by P.W.5, rent receipts Ext.1/B related to receipt of rent for the year 1953 and the same has been signed on 12.2.1953, i.e. after the date of vesting. There is no scope for placing reliance on Ext.17 the alleged patta or deed of settlement in view of categorical admission on the part of P.W.1 that no patta was issued to the plaintiffs in respect of the suit

land. It was further argued that evidence of P.Ws. 2 to 4 is not only inconsistent with the plaintiffs' case but also all the three witnesses contradict each other. The nature of their evidence goes to show that none of the witnesses has knowledge regarding plaintiffs' possession over the suit land. Therefore, there is no infirmity in the impugned judgment and decree.

9. It was rightly contended by the learned counsel for the appellants that plaintiffs' claim for declaration of right, title and interest depends on acceptance of their assertion to have acquired occupancy right over the suit land being in cultivating possession for more than the statutory period. Law relating to acquisition of occupancy right under the Orissa Tenancy Act has been lucidly stated by a Full Bench of this Court in **Radhamani Dibya and others -vs- Braja Mohan Biswal and others** : AIR 1984 Orissa 77 relied upon by the learned counsel for the appellants. It has been held :

“xxx In order to acquire the status of a tenant, two conditions must be satisfied. First, a person must be holding land under another person. Secondly, he is, or but for a special contract would be, liable to pay rent for the land. “Rent” means whatever is lawfully payable or deliverable in money or kind by a tenant to his landlord on account of the use and occupation of the land held by him. A bhagchasi cultivates or possesses land lawfully and not as a trespasser. Where a person held the land under the ex-proprietors and was liable to pay the price of bhag produce to them, it must be held that he held the lands lawfully and was liable to pay rent. Under the

circumstances the contract with ex-proprietors was one of letting out by landlord to a tenant, more so when there was nothing to show that such person cultivated the land as a labourer or servant. Such a person being tenant under the ex-proprietors was a raiyat. Such a person being a tenant as defined in Section 3(23) of the O.T. Act by the date of vesting on 1.4.1954, he would fall within the class of non-occupancy raiyats. On and with effect from 1.4.1954 he became a non-occupancy raiyat under the State Government. Thus, he became a settled raiyat under Section 23 of the O.T. Act and by virtue of the status, he acquired occupancy right.”

10. Learned counsel for the appellants made an attempt to harp on the circumstance that defendants did not adduce any evidence and contended that in absence of any evidence adduced from the side of the defendants, plaintiffs’ evidence ought to have been accepted in toto by the trial court. However, a plaintiff has to stand on his own legs. Initial burden to establish the case lies on the plaintiff. Only when plaintiff discharges initial onus and makes out a case, onus shifts to the defendants to disprove plaintiff’s case. Upon reference to the provisions under the Evidence Act, it has been held by the Supreme Court in **Anil Rishi –vs- Gurbaksh Singh**: AIR 2006 Supreme Court 1971 relied upon on behalf of the appellants:

“The initial burden of proof would be on the plaintiff in view of S.101. The elementary rule is S.101 is inflexible. In terms of S.102 the initial onus is always on the plaintiff and if he discharges that onus and makes out a case which entitles him to a relief, the onus shifts to the defendant to prove those circumstances, if any, which would disentitle the plaintiff to the same. xxx ”

11. Plaintiffs' assertion to be settled Rayats of village Patia being tenants under the Raja of Patia and thereafter under the Raja of Kanika has not been challenged by the defendants. Records of right of the years 1931 and 1973 Exts.4 to 12 in respect of other lands recorded in favour of the plaintiffs have also been filed and proved in this regard.

12. So far as plaintiffs' claim of possession over the suit land since 1943 is concerned, reliance was placed on documentary evidence in Exts.1 series, rent receipts and Ext.17, stated to be deed of settlement; and also oral evidence of P.Ws.2 to 4.

13. Plaintiffs sought to prove deed of settlement or patta Ext.17 by examining P.W.5 who was serving as Amin under the Kanika Estate. He simply deposed that the hand writing in Ext.17 is in the hand of one Sapneswar Mishra who was the Tahasildar of Kanika Raja. Ext. 17 does not contain any signature. P.W.1 did not depose a word regarding the deed of settlement. On the contrary, it was elicited from P.W.1 in his cross-examination that the plaintiffs did not pay any salami nor did they receive any patta in respect of the suit land from Kanika Estate. Therefore, Ext.17 is of no help to the plaintiffs.

14. P.W.1 stated that plaintiffs paid rent in respect of the suit land to Kanika Estate and obtained rent receipts Exts.1, 1/A and 1/B. Out of the three rent receipts Ext.1/B has been granted in token of receipt of rent for '1360 Sala' also which corresponds to year 1953. It has been signed on 12.2.1953. P.W.5 categorically deposed in his cross-examination that Estate of Kanika vested with the Government on 27th November, 1952. Therefore, rent receipt Ext.1/B relates to a period subsequent to vesting of the suit land. By no stretch of imagination plaintiffs could have paid rent for the suit land to Kanika Estate after vesting. In such circumstances, conclusion of the trial court that deed of settlement Ext.17 as well as recent receipts Ext.1 series were manufactured for the purpose of the case does not suffer from any infirmity. Neither of the exhibits can be relied upon to infer possession of the plaintiffs over the suit land.

15. On an appraisal of oral evidence it has been held by the trial court that evidence of P.Ws.2, 3 and 4 goes to show that these witnesses have no idea about the location of the suit land. From the Hal Records of Rights Ext.3 and sketch map Ext.14 it appears that the suit land appertains to fractions of big plots. However, P.W.2 testified that the suit land appertains to two full plots. Under one plot there is four acres and in the other plot

there is one acre of land. P.W.2 stated that his land is situated to the North of the suit land which is bounded by the land of Sibendra Parida on the South, Satyapriya Naik on the East and Guru Sahu on the West. These three boundary tenants have not been examined by the plaintiffs. P.W.2 admitted that his land on the North of the suit land has not been recorded in his name. He further stated that he received patta from Raja of Kanika without paying any Salami in respect of the land possessed by him. P.W.3 stated that the suit land is by the road side to his land. In his cross-examination it was elicited that the entire area measuring Ac.100.00 is lying fallow and the suit land is situated in the middle of this vast area. Though the plaintiffs claimed possession over the suit land from the year 1943, P.W.3 stated that plaintiffs were cultivating the suit land prior to 1931 settlement. P.W.4 stated that his land is situated at a distance of 200 to 300 cubits away from the suit land and that the suit land is situated in two patches which is in the middle of vast Anabadi area. Considering such evidence, it has been pointed out by the trial court that in case the suit land situates in the middle of vast Anabadi area, P.W.4's assertion that his land is situated at a distance of 200 to 300 cubits is not acceptable. Plaintiffs have not adduced any other evidence to establish their claim of possession over the suit

land since 1943. No explanation has been offered from the side of the plaintiffs for not obtaining Expadia or tenant's ledger submitted by the Kanika Estate to the Government at the time of vesting or for not taking any step to get their names recorded during Hal settlement operation. In such circumstances, the trial court does not appear to have committed any illegality in not accepting the sketchy and inconsistent evidence of P.Ws.2 to 4.

16. In view of the above discussions, in the absence of cogent evidence, the appellants have failed to make out any case for interference with the impugned judgment and decree. The appeal has no merit and is liable to be dismissed.

17. Accordingly, the appeal is dismissed. The impugned judgment and decree passed by the trial court are confirmed.

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B.K. Patel, J.