

IN THE HIGH COURT OF ORISSA AT CUTTACK

S.A. NO.118 OF 1988

In the matter of an appeal under Section-100 of the Code of Civil Procedure has assailed the judgment and decree passed by the learned District Judge, Sambalpur in Title Appeal No.24 of 1977 by dismissing the judgment and decree passed by the learned Sub-ordinate Judge, Sambalpur in Title Suit Nos.05 of 1970.

Prajapati Das (Since Dead) ::: *Appellant*
Through his LRs

-versus-

Jenamani Das (Since Dead)& her :: *Respondents*
LRs & Others

(Appeared in this case through Hybrid Arrangement (Virtual/Physical) Mode):

For Appellant - M/s. S.K. Mund, D.P. Das,
A.R. Mohanty, J. Sahu,
H.K. Mund, A.K. Dei,
Advocate,
For Respondents - M/s. S.S. Basu, U.C. Mohanty,
P.K. Khuntia, R. Mitra,
Advocates.

CORAM:
MR. JUSTICE D.DASH

DATE OF HEARING:: 27.04.2022,DATE OF JUDGMENT::20.06.2022

The Appellant by filing this Appeal under Section-100 of the Code of Civil Procedure 1908 (for short, ‘the Code’) has assailed the judgment and decree passed by the learned District Judge, Sambalpur in Title Appeal No.24 of 1977.

By the same, the Appeal filed by the Appellant and another namely, Rudrakshya Das being two out of the four Plaintiffs under Section-96 of the Code in challenging the judgment and decree passed by the learned Sub-ordinate Judge, Sambalpur in Title Suit Nos.05 of 1970 has been dismissed; whereby the suit filed by the original Appellant and three others together as the Plaintiffs has been dismissed.

The original Appellant (Plaintiff No.3) having died, his legal representatives having come on record are pursuing the present Appeal. The original Respondent No.1 and Respondent No.5 having died during pendency of this Appeal, his legal representatives are also on record.

2. For the sake of convenience, in order to avoid confusion and bring in clarity, the parties hereinafter have been referred to, as they have been arraigned in the Suit.

3. Plaintiff's case is that:-

The properties in suit stood recorded in the name of Rama Chandra Rout, who happens to be the father of Plaintiff No.1, as Thikadar.

It may be stated at this stage that this Plaintiff No.1 was the Respondent No.5 in the First Appeal and here he is also Respondent No.5.

Prior to commencement of Hamid Settlement Operation, Rama Chandra gifted away those lands to Brajasundar Das, the father of the Plaintiff Nos. 2 & 4 and grandfather of Plaintiff No.3. Therefore, in the Hamid Settlement record, the father of the Plaintiff No.1 being so recorded as the Thikadar of the village, in the remark column, possession of Brajasundar stood noted. Since then, Brajasundar and then his heirs possessed the suit land. On 01.04.1996, said property vested with the State free from all encumbrances by virtue of operation of the provisions of Orissa Estate Abolition Act, 1951 (for short, “the OEA Act”). It is then the Competent Authority under the OEA Act issued Patta in the name of Plaintiff No.1 noting the possession of Brajasundar, when the Plaintiff Nos. 2 to 4 continued possess the land as before. Sometime in the year, 1969, the Defendant Nos. 2 to 4 created trouble in the possession of the suit land by the Plaintiffs and on the next year, the Defendant No.5 forcibly took over the possession of the suit land. The suit has thus come to be filed.

4. The Defendant No.1 contested the suit. In the written statement it is submitted that Brajasundar having got the property from Rama Chandra Das had orally sold the same along with the land under Plot No.157 to his grandfather way back in the year 1924 for a consideration of Rs.60/- and said sale was with the delivery of possession of the land so sold. It is stated that since that time onwards

the ancestors of the Defendant Nos. 1 to 4 and thereafter those Defendant Nos. 1 to 4 have been continuing to possess the land. It is also their case that portion of land from Plot No.156 had been acquired by the State and there the Plaintiff Nos. 2 to 4 and the Defendants had advanced their rival claim for being awarded with the compensation and so paid. The Land Acquisition Collector has however awarded the compensation in favour of the Defendants having found the Defendants to be the rightful owner and as such entitled to the said compensation. It is further stated that the said order too has attained finality.

4. Faced with the above rival pleadings, the Trial Court framed the issues of which issue no.3 and 5 are important as those relates to the claim of the Plaintiffs to be having the right, title and interest over the suit land.

The Trial Court while answering the issues held that the decision in the land acquisition proceeding wherein for the part of the land under Plot No.156, the compensation being awarded since has been paid to the Defendants having found the same as the entitlement of the Defendants, the same operates as resjudicata.

It has next found that the Defendants have not been able to prove the factum of oral sale of such property by Rama Chandra to their ancestors. It has said that notwithstanding the rights whatsoever

and howsoever that the parties were having over the suit property, the suit land coming to be vested with the State w.e.f. 01.04.1960 when the provisions of OEA Act came into force, finding Further the settlement of the land in favour of Plaintiff No.1 and issuance of Patta as void for non-publication of notice of the proceeding as mandated under the rules and further having found that neither Plaintiff No.1 nor Brajasundar were in khas possession of the said land on the date of vesting, the claim of the Plaintiffs as having right, title and interest over the suit property has been held to be untenable. Thus, having held that both sides i.e. Plaintiffs and Defendants have failed to establish their title over the property, the Plaintiff has been non-suited and has been held as not entitled to the reliefs claimed.

5. The First Appellate Court being moved by two of the unsuccessful Plaintiffs has confirmed the finding of the Trial Court that the Plaintiffs have no right, title and interest over the suit property.

6. This Appeal has been admitted to the answer the following substantial questions of law:-

Whether Ext.A series as well as Ext. D are admissible in evidence to be relied upon by the Appellate Court?

At this stage, it be indicated that Ext.A series are the rent receipts said to have been granted by Pitambar Gountia and Ext.D is the certified copy of the order dated

18.09.1985 passed by the Land Acquisition Officer in Case No.16/1-2 of 1957-58?

7. Learned Counsel for the Appellant submitted that as both the Courts below have held the rights of the Plaintiff Nos. 2 to 4 over the land in question have stood extinguished on account of vesting of the land in view of the operation of the provisions of OEA Act; the only substantial question of law, required to be answered is that whether the possession of the Plaintiff Nos. 2 to 4 over the suit land got disrupted by the vesting by operation of the provisions of OEA Act?

He submitted that as stipulated in Section-5 of the OEA Act, the land would vest with the State from all encumbrances and the explanation makes it clear that such encumbrances does not include the interest of all raiyat or under raiyat. Inviting the attention of this Court to expression 'Raiyat' as contained in section-2(n) of the OEA Act, it was submitted that as per law which was prevailing during pre-independent period i.e. Central Province Tenancy Act, 1920 (for short called as "the CPT Act") in section-3 of the said Act, three classes of tenants had been recognized and the ancestors of these Plaintiffs fall within that category of tenants as occupancy tenant as delineated in section-10 who is not absolute occupancy tenant or sub-tenant, which finds described in section-4 of the Act. So, it was submitted that the possession of the ancestors and thereafter these Defendants did not get

any break or face disruption in view of the operation of the provisions of OEA Act. He, therefore, submitted that the courts below should not have held that the right, title and interest of the Plaintiff Nos.2 to 4 over the suit land stood extinguished on the vesting of the suit land by operation of the provisions of OEA Act, and accordingly, it should have been decided that Plaintiff Nos. 2 & 4 have the possessory title over the suit land.

8. Learned Counsel for the Respondent submitted all in favour of the findings recorded by the First Appellate Court. According to him, the First Appellate Court is perfectly right in holding that upon vesting of the land with the State on coming into force of the provisions of the OEA Act and required notification, the rights of all the persons in the land or other immovable properties in the suit land stood extinguished as the vesting as mandated under law is complete in every respect. It was further stated that when it is not claimed by the Plaintiffs that they were having the intermediary interest or interest of a raiyat or under raiyat and that having not been so pleaded in the plaint and as neither the ancestors of the Plaintiffs nor the Plaintiffs are falling in the category of raiyat and under raiyat and as such having the interest in the suit land and that being for the first time raised in the Second

Appeal and even not so hinted in the memorandum of Appeal is not be entertained.

9. The Counsels for the parties however in chorus stated that the substantial question of law as framed vide order dated 21.03.1989 is not required to be answered and in its place the substantial question of law as placed by the learned Counsel for the Appellant, if answered would suffice the purpose.

10. Keeping in view the submissions made, I have carefully read the judgments passed by the Courts below.

The OEA Act received the assent of the President on 23rd of January, 1952 and was published in the Official Gazette dated 09.02.1952. Section-3 of the Act provides that the State Government may from time to time by notification declare that the estate specified in the notification has passed to and become vested in the State free from all encumbrances. The consequences of vesting of estate in the State has been provided in section-5 of the Act. The explanation contained in that section as to what the encumbrance mean is now banked upon by the Plaintiffs to say that since they had interest of a raiyat which is not included within the meaning of and falls as an encumbrance, the suit land cannot be said to have vested in the State free from all encumbrances. Therefore, it is stated that the rights of the ancestors of the Plaintiff as also the Plaintiffs did never get disrupted

or severed and stood fully extinguished with all those coming to the hands of the State.

Raiyat has been defined in section-2(n) of the OEA Act. It reads as under:-

“(n) “Raiyat” means any person holding the land for the purposes of cultivation and who has acquired the right of occupancy according to the tenancy law or rules for the time being in force in that area, or in the absence of such law or rules, the custom prevalent in that area.”

It is now said that as per the provision of CPT Act, the ancestors of the Plaintiffs and the Plaintiffs were within the category. The Admitted fact here emerges that the suit land being “Sir” lands have vested in the State. The Plaintiffs themselves have pleaded the followings in the plaint:-

“2. That after the vesting of the estate in the State of Orissa under the Estates Abolition Act in Case No. 34 of 60/61, Plaintiff No.1 was recorded as tenant with possession noted of late Brajasundar in the remark column for the suit lands bearing No.156:-0.72 & 158:- 1.12 total 1.84 and the sons and heirs of late Brajasundar continued in possession as before till 1969 when the defendants forcibly trespassed and created disturbance in Magsir 1969 and reaped paddy grown by the Plaintiff Nos. 2 to 4. It transpires now that Defendant No.5 forcibly trespass into suit lands in 1970 and is continuing in possession since then.”

They too had contended before the First Appellate Court that whatsoever be the position prevailing as before, the settlement made by the Collector under the OEA Act in 1960-61 created fresh title in favour of the Plaintiffs. The Plaintiffs have also proved the order-sheets of Case No.34 of 1960-61 in respect of their claim as to have got the land by virtue of that order. This being the specific plea, this Court is not in a position to now say that the vesting was not free from all encumbrances and it was still carrying the encumbrance as to the right of the ancestors of the Plaintiff and the Plaintiffs as occupancy tenant as per the CPT Act and thus being not within the purview of encumbrance as explained in section-5 of the OEA Act and coming to stand as raiyat as defined in section-2(n) of the said Act.

In that view of the matter, it is too late for the Plaintiffs to raise such a plea which has to be repelled. The Plaintiffs once thus accepting the vesting to be free from encumbrances then claiming to have been settled with the land after the courts below have held the settlement to be void to have been so made in utter violation of the mandatory provisions of the Acts and Rules and thereby exercising the limited jurisdiction in saying it to be void, finding that said finding is wholly sustainable, now appears to be turning back in taking the plea that the vesting was not complete in all respect and it was carrying with the liability as to the right of the ancestors of the Plaintiffs and Plaintiffs.

They are precluded to again back to the pre-settlement stage in asserting their right if any they **go ahead** over the suit land prior to the vesting. Accordingly, the substantial question of law in my considered view does not arise to be answered.

11. In the result, the Appeal stands dismissed. However, there shall be no order as to cost.

**(D. Dash),
Judge.**

Narayan

