

IN THE HIGH COURT OF ORISSA AT CUTTACK
W.A. No. 314 of 2019

Kalyani Dutta (Dead) and Others ***Appellants***

Mr. Ramakanta Mohanty, Senior Advocate

-versus-

Assistant Settlement Officer, Puri and Others ***Respondents***

Mr. Ishwar Mohanty, Addl. Standing Counsel

CORAM:
THE CHIEF JUSTICE
JUSTICE M.S. RAMAN

Order No.

ORDER
10.11.2022

I.A. No.535 of 2021

07. 1. For the reasons stated therein, the application is allowed. Consequently, the delay in filing the substitution application is condoned. The I.A. is disposed of.

I.A. No.533 of 2021 and I.A. No. 534 of 2021

2. The aforementioned applications have been filed by the legal representatives (LRs) of the Appellant No.1 seeking substitution and setting aside abetment respectively.

3. For the reasons stated therein, the prayers made in the aforementioned applications are allowed. The I.As are, accordingly, disposed of.

W.A. No.314 of 2019

4. The challenge in the present appeal is to an order dated 1st July, 2019 passed by the learned Single Judge dismissing the Appellants' OJC No. 3962 of 1994 affirming an order dated 18th February, 1994

passed by the Commissioner of Land Records and Settlement, Odisha, Cuttack in Revision Petition No. 323 of 1989.

5. The background facts are that the Appellants are the successors-in-interest of late Debendranath Dutta. In the year 1925 one W.E. Evans of USA had purchased more than 700 acres of land which include in the suit land, from one Sri Sadhucharan Chand by a registered sale deed. Between 1930 and 1940 he had sold some portions of acquired land. In 1944 through his authorized agent Hrusikesh Mishra, he donated land measuring 100 acres through a registered settlement deed in favour of Brahmananda Yoga Ashram, Marfat Bimal Charan Chand, who remained in exclusive possession of the suit land. By a registered sale deed dated 9th December, 1966 Bimal Charan Chand sold Sabik Plot No.881 measuring Ac 79.08 decimals and Ac 1.28 decimals respectively to the predecessor-in-interest of the present Appellant i.e. Debendranath Dutta.

6. Under the Odisha Estate Abolition Act, the entire land vested with the Government. Under Section 7(1)(a) of the Orissa Estate Abolition Act, 1951 (OEA Act), no settlement of land vested in the State can take place in favour of an intermediary unless such intermediary is in 'cultivating possession' of the suit land either by himself with his own stock or by his own servants or by hired labour or with hired stock.

7. The case of the Appellants was that the predecessors-in-interest had validly purchased a suit land by a registered sale deed dated 9th December, 1966 and therefore, had valid title. It appeared that initially the Asst. Settlement Officer (ASO) on the basis of the entry in the tenant register in favour of the father of the present Appellants,

recorded the suit land in his favour ignoring the objections of the State submitted through the Tahasildar, Nimapara. Against that order of the ASO, an appeal was filed before the Additional Settlement Officer, Puri which again came to be dismissed by an order dated 8th December, 1987. Thereafter, when a revision was filed before the Commissioner, Land Records and Settlement, Odisha it was held that the settlement of the land in favour of the father of the Appellants by the Collector, Puri and not the Tahasildar, Nimapara was without jurisdiction and, therefore, no valid title could be created in favour of the father of the Appellants.

8. While there is force of contention of Mr. Mohanty, learned Senior Counsel that in terms of the judgment in *State of Odisha v. Brundaban Sharma (1995) Supp. 3 SCC 249* the prior confirmation of the Board of Revenue was necessary only for transfers other than by way of sale, the fact remains that in terms of the judgment in *State of Odisha v. Nityananda Satapathy (96) 2003 CLT 720 (SC)* for taking benefit of Section 7(1)(a) of the OEA Act, the intermediary had to be in cultivating possession.

9. While Mr. Mohanty referred to a communication addressed to the Anchal Adhikari, Nimapara by the Deputy Collector-in-Charge, Puri communicating settlement of 100 acres in favour of Bimal Charan Chand, that by itself will not confirm the cultivating possession of the predecessor-in-interest of the present Appellants. Mr. Mohanty then submitted that an inquiry ought to have been held to find out if in fact the Appellants were in cultivating possession. The fact remains that during the long pendency of the writ petition for almost

25 years and even during pendency of the writ appeal, the Appellants have not been able to produce any material whatsoever to show that they were at any point in time in ‘cultivating possession’ of the land in question. That being the essential prerequisite for grant of any settlement in their favour in terms of Section 7(1)(a) of the OEA Act, the Appellant could not have expected to succeed before the learned Single Judge.

10. With the jurisdictional facts being against the Appellants, the Court is unable to find any error having been committed by the learned Single Judge in dismissing the Appellants’ writ petition by the impugned order. Consequently, the Court finds no ground to interfere in the present appeal.

11. The writ appeal is dismissed. All the pending applications connected to the writ appeal are also disposed of. The interim order earlier granted is hereby vacated.

(Dr. S. Muralidhar)
Chief Justice

(M.S. Raman)
Judge

S.K. Jena/Secy.