

# **SUPREME COURT OF INDIA**

State of Orissa

Vs.

Fakir Charan Sethi (Dead Through Lrs.)

C.A.Nos.1812-1815 of 2010

(Ranjan Gogoi and R.K.Agrawa JJ.)

09.10.2014

## **JUDGMENT**

### **RANJAN GOGOI, J.**

1. Civil Appeal No. 1812 of 2010 arising from the common judgment and order dated 30.7.2009 passed by the High Court of Orissa in F.A.No.10 of 2001 affirming the decree dated 29.7.2000 passed by the learned Trial Court may be conveniently treated as the main appeal for consideration. In that event the fate of the connected appeals would stand determined by the outcome of the aforesaid Civil Appeal i.e. C.A. No.1812 of 2010.

2. The respondents 1 and 2, as plaintiffs, instituted Title Suit No.620 of 1998 in the Court of learned Civil Judge, (Senior Division) Bhubaneswar seeking a declaration of occupancy rights in their favour as well as for affirmation of their possession as tenants in respect of the suit land. A further direction to the defendants 1 and 2 (appellants) to accept rent from the plaintiffs and a permanent restraint against interference in the possession of the plaintiffs over the suit land was also sought in the suit filed.

3. The short case of the plaintiffs(respondents) before the learned Trial Court was to the effect that their father Nidhi Sethi who served under the Ex-ruler of Kanika Raja as a washer man was granted lease of the suit land measuring 4.16 acres covered

under Sabik Plot No.292 appertaining to holding No.303 situated in Mouza Chandrasekharpur. According to the plaintiffs, the aforesaid land was leased to their father on 14.2.1942; possession of the land was delivered and rent paid by their father as tenant was accepted by the Ex-ruler. The plaintiffs further claimed that an unregistered Hatapatta (lease agreement) (Ext.1) was also granted by the Ex-proprietor in favour of the plaintiffs<sup>TM</sup> father. It was the case of the plaintiffs that since the date of the lease their father and thereafter the plaintiffs had been in possession of the suit land using the same for residential as well as agricultural purposes.

4. It was the further case of the plaintiffs, as stated in the plaint, that the intermediary interest in the estate including the suit land stood abolished and vested in the State Government sometime in the year 1954 under the provisions of the Orissa Estate Abolition Act, 1951 (hereinafter referred to as ~the Abolition Act<sup>TM</sup>). According to the plaintiffs, even thereafter, their father had paid rent to the State Government through the Tehsildar and had continued to be in possession of the suit land. It was also the case of the plaintiff that their father had died in the year 1967, whereafter, the plaintiffs continued to remain in possession. Furthermore, according to the plaintiffs, in the Record of Rights published in the year 1974 upon completion of settlement operation the land was shown as Government land; the said entry was on account of fact that the plaintiffs were living outside Orissa. In the Record of Rights pursuant to 1988 settlement the State Government was shown as the owner of the suit land with a note of forcible possession of the same by the plaintiffs against the remarks column. While the matter was situated, the defendants 3 and 4 in the suit i.e. Director of NCC and Defence Estate Officer attempted to trespass into the suit land. The suit in question was therefore filed seeking the reliefs earlier noticed.

5. The defendants 1 and 2 filed a joint written statement pleading, inter alia, that the claim of the lease in favour of the father of the appellant with effect from 14.2.1942 and the execution of the Hatapatta (Ext.1) was untouched. The Hatapatta and the supporting rent receipts issued by the Ex-ruler (Ext.2 series), according to the defendants, were forged and fabricated documents. The claim of possession of the father of the plaintiffs and thereafter of the plaintiffs over the suit land was vehemently contested by the State in the written statement filed. The State also contended that the entries in the Record of Rights after conclusion of the settlement operation in the year 1974 which did not disclose any interest of the plaintiffs over the suit land were not challenged by the plaintiffs in any forum. According to the State,

the entry of forcible possession of the plaintiffs in the remarks column of the Record of Rights pursuant to the 1988 settlement operation is a forged and fabricated entry. The certified copy of the tenancy roll (Ex.4) prepared by the intermediary and submitted by the Government, after the vesting, showing the name of the plaintiffs therein as well as the tenancy ledger (Ex.5) were also contended to be forged.

6. The learned trial court framed as many as five issues for trial, out of which issues D and E were considered to be of primary importance. The aforesaid two issues framed were as follows:

D “Did the plaintiff<sup>TM</sup>s father acquire occupancy right over the suit land being a tenant under the ex-proprietor ?

E “Are the plaintiffs and their father in continuous possession of the suit land since 1942?

7. The learned Trial Court accepted the credibility and authenticity of the Hatapatta (Ext.1); rent receipts issued by the Ex-ruler (Ext.2 series); rent receipts granted by the Tehsildar after the vesting of the land in the State Government (Ext.3); certified copy of the Rent Roll (Ex.4) prepared by the Ex-proprietor and submitted to the Government at the time of vesting; the certified copy of the tenancy ledger (Ext. 5) prepared by the Tehsildar, Cuttack on 31.3.1981. That apart, a host of other documents exhibited by the plaintiffs, particularly, the reports of the different authorities (Exts.9, 11 and 12) to show the possession of the plaintiffs as well as the certificates of such possession issued by the Tehsildar, Bhubaneswar (Ext.14); receipts granted by the Bhubaneswar Municipal Corporation (Ext.15 series); Driving Licence (Ext. 17), Bank Pass Book (Ext.18); Ration Card (Ext.19); Telephone Bills (Ext.20 series) were taken into account by the learned Trial Court to record its finding of possession in favour of the plaintiffs.

8. The continuous possession of the plaintiffs since the year 1942 as found by the learned trial court was understood to have satisfied the requirement under Section 8 of the Abolition Act entitling the plaintiffs to be recognized as tenants under the State Government, and, therefore, to the reliefs sought in the suit. The claim of the State with regard to the doubtful authenticity of the documents relied upon by the plaintiffs were understood by the learned trial court to be unsubstantiated and unverified claims

and, therefore, unworthy of any credence. It is on the aforesaid broad basis that the plaintiff suit was decreed by the learned trial court.

9. Against the decree dated 29.7.2000 passed by the learned trial court, the State of Orissa filed an appeal i.e. F.A.No.10 of 2001 before the High Court. During the pendency of the appeal before the High Court, the land was allotted to one Bombay Cardio Vascular Surgical Pvt. Ltd. (respondent No.2 in C.A.No.1814 of 2010). The aforesaid allotment was made subject to the result of F.A.No.10 of 2001. The said allotment and the alleged assertion of right on the basis thereof by the allottee came to be challenged by the first respondent/plaintiff in W.P.Nos.7962 and 8874 of 2008. A Public Interest Litigation registered as W.P.No.7434 of 2008 was also filed before the High Court challenging the ~grant™ of the land in favour of the plaintiffs and the entries with regard to their possession made in the Record of Rights of the year 1988. The aforesaid writ petitions along with F.A.No.10 of 2001 were heard analogously and were disposed of by the common order of the High Court dated 30.7.2009.

10. The High Court on hearing the appeal against the decree (F.A.No.10 of 2001) upheld the findings of the learned trial court by reiterating the same on reconsideration of the evidence and materials on record. What however would require specific notice is that before the High Court, the appellant-State had filed two affidavits of the Tehsildar Bhubaneswar and Cuttack Tehsil respectively to show that Exts.4 and 5, (issued in 1981- 1982) relied upon by the learned trial court, could not have been issued by the Tehsildar, Cuttack inasmuch as Village Chandrasekharpur (where the suit land is situated) was under the jurisdiction of Cuttack District till bifurcation in the year 1970 and thereafter the said village became a part of Bhubaneswar Tehsil. As per Government™s Notification all records pertaining to village Chandrasekharpur are not available in the Cuttack Tehsil. The authority of the Tehsildar, Cuttack to issue Ext. 4 and 5 in the years 1981-82 when village Chandrasekharpur became a part of Bhubaneswar Tehsil was specifically questioned in the aforesaid two affidavits. In so far as Ext. 3 series (rent receipts) issued by the Tehsildar is concerned, lack of authenticity of the same was reiterated by the Tehsildar, Cuttack in his affidavit filed in the High Court specifically contending that the same was not genuine and could not have been granted in accordance with law i.e. under the law.

11. Before us, Shri Tushar Mehta, learned ASG has contended that the Hatapatta being an unregistered instrument cannot be construed as a legally valid instrument of

lease. Even if the said document i.e. Ext.1 is to be accepted, the rent receipts (Ext.2 series) are entry passes for collection of different forest produce inasmuch as in the Record of Rights published since the year 1931, indisputably, the land is described as Jhati Jungle or forest land. What is of significance is the further argument of Shri Mehta that the said land being Jhati Jungle or forest land and the status of the land being Anabadi (unfit for cultivation) possession of the plaintiffs<sup>TM</sup> father of the suit land on the date of vesting i.e. 1954 even if is accepted (though the same has been vehemently denied), the said possession will not enure to the benefit of the plaintiffs inasmuch as the possession contemplated by Section 8 of the Abolition Act must be for purposes of cultivation and the holding of the land must be in the status of a raiyat. In this regard, reliance has been placed on the decision of this Court in State of Orissa & Ors. Vs. Harapriya Bisoi[1]. According to Shri Mehta, there is no legal much less acceptable evidence and no finding whatsoever of such possession in favour of the plaintiffs has been recalled by the learned trial court. Pointing out the relevant paragraphs (paras 34 to 36) of the report in State of Orissa & Ors. Vs. Harapriya Bisoi (supra) Shri Mehta has contended that the pendency of a criminal investigation in respect of the Hatapatta issued in the said case, has been noticed by this Court. The Hatapatta (Ext. 1) issued to the father of the plaintiffs, as claimed, are in circumstances similar to the present case. By pointing out the averments in the written statement filed by the State before the learned trial court and the affidavits of the Tehsildar, Cuttack and Bhubaneswar Tehsil before the High Court, Shri Mehta has submitted that there is grave doubt with regard to the authenticity of the documents relied on by the learned trial court as well as by the High Court in support of the impugned findings. Shri Mehta has also pointed out that the other documents (Exts.9 to 20) would at best go to show the possession of the plaintiffs after the date of vesting which is not at all relevant for deciding the entitlement of the plaintiffs as claimed in the suit.

12. In reply, Shri Jaideep Gupta, learned senior counsel appearing on behalf of respondent Nos. 1 and 2 has taken us through the pleadings in the plaint and the relevant part of the evidence of PWs.1 and 2 to show that what was pleaded and proved by the evidence brought by the plaintiffs is the continuous possession of the plaintiffs or their predecessors and cultivation of a part of suit land by them since the year 1942. On the said basis it is urged that the statutory protection available to the plaintiffs under Section 8(1) of the Abolition Act was rightly accorded by the learned trial court and affirmed by the High Court in appeal. It is contended that the objections

taken with regard to the authenticity of some of the documents brought on record by the plaintiffs are belated as the said documents were allowed to be exhibited in the trial without any objection from the State. The criminal investigation does not pertain to the Hatapatta issued to the plaintiffs father (Ext.1). It is, therefore, contended that there is no basis for interference.

13. It will not be necessary to go into the various contentious issues arising from the weighty arguments advanced by the learned counsels for the parties as, according to us, the controversies arising are capable of being resolved within a narrow compass. In *State of Orissa & Ors. Vs. Harapriya Bisoi (supra)*, it has been held by this Court that possession of a tenant under an intermediary on the date of vesting of the land under the Abolition Act so as to give the tenant the benefit of continuity of tenure under Section 8(1) of the said Act would have to be in the status of a raiyat actually cultivating the land. The definition of Raiyat contained in Section 2(n) and the provisions of Section 5(2) of the Orissa Tenancy Act, 1913 were at length considered by this Court to come to the aforesaid conclusion which may be noticed by a specific reference to the relevant paragraphs of the report in *State of Orissa & Ors. Vs. Harapriya Bisoi (supra)*:-

26. By virtue of Section 8, any person who immediately before the vesting of an estate in the State Government was in possession of any holding as a tenant under an intermediary, would on and from the date of the vesting, be deemed to be a tenant of the State Government. The words holding as a tenant mean the raiyat and not any other class of tenant: reference in this regard may be drawn to the definition of holding in the Orissa Tenancy Act, 1913:

3. (8) ~holding<sup>TM</sup> means a parcel or parcels of land held by a raiyat and forming the subject of a separate tenancy; Section 8 thus confers protection only on the raiyat i.e. the actual tiller of the soil.

27. Significantly, a lease and lessee on the one hand are defined separately from the raiyat under the Act. Thus, the mere execution of a lease by the intermediary in favour of a person would not confer the status of a raiyat on the lessee nor would protect the possession of such lessee under Section 8. In fact, a lease would amount to a transfer of an interest of the intermediary in the land to the lessee. In such a situation, far from being a tenant protected under Section 8,

the lessee would in fact step into the shoes of the intermediary with his interest being liable for confiscation and his entitlement limited to compensation from the State.

28. On the other hand, for protection under Section 8, one has to be a raiyat cultivating the land directly and having the rights of occupancy under the tenancy laws of the State. Thus, a lessee who is not actually cultivating the land i.e. who is not a raiyat, would not be within the protection of Section 8 of the Act. Section 2(h) of the Act in its residuary part states that intermediary would cover all owners or holders of interest in land between the raiyat and the State. In Para 30 of the aforesaid report, on similar facts, the claim of cultivation of the land recorded as Anabadi and jhati jungle i.e. forest land in the said case was negated by this Court on the plain logic that such a claim of cultivation can have no basis when the land is described in the Revenue records as ~Jhati Jungle™ and also as Anabadi i.e. uncultivable.

14. In the present case even though the evidence of PW1 and 2 may indicate that the suit land was cultivated by the plaintiffs, in the light of views expressed by this Court in para 30 of the report in the State of Orissa & Ors. Vs. Harapriya Biso (supra), the aforesaid evidence, without further details, has to be construed as wholly unacceptable proof of cultivation of the suit land by the plaintiffs™ predecessors on the date of vesting of the land under the provisions of the Abolition Act. It must be made clear that what is relevant under Section 8(1) of the Abolition Act to confer the benefit of continuity of tenure to the tenant is possession as well as cultivation of the land as on the date of vesting. Therefore what was required to be established by the plaintiffs in the present case is cultivation by the predecessors of the plaintiffs in the year 1954 when the land had vested in the State notwithstanding the status of the land as shown in the Record of Rights. No specific evidence in this regard has been laid by the plaintiff (PW1) except a bald and ominous claim that the land was cultivated by his father. If the plaintiffs had failed to prove possession and cultivation as on the date of vesting, as we are inclined to hold, the same, irrespective of any other question, will disentitle the plaintiffs to the reliefs sought in the suit.

15. The appellant- State in its written statement before the learned trial court as well as in the appeal before the High Court had raised a specific plea of forgery and fabrication of the documents relied upon by the plaintiffs. The affidavits of the

Tehsildar, Cuttack and Bhubaneswar Circle filed before the High Court specifically deal with aforesaid issue. The appellant State had filed an application under Order 41 Rule 27 of the Code of Civil Procedure for leave to bring the same on record. The said application was rejected and all objections brushed aside by holding that the burden to prove the forgery alleged has not been satisfactorily discharged by the State. It is our considered view that the matter required a deeper probe and investigation and did not call for a summary rejection. That apart in State of Orissa & Ors. Vs. Harapriya Bisoi (supra) the issue with regard to validity of a Hatapatta similar to Ext. 1 was found to be the subject matter of an ongoing criminal investigation. All these required the elimination of even slightest of doubt with regard to the authenticity of the relied upon documents. The effect of fraud on judicial orders has also been exhaustively considered in State of Orissa & Ors. Vs. Harapriya Bisoi (supra) and it will not be necessary to reiterate the views expressed therein except to say that on the slightest of doubt or even prima facie proof of fraud, the matter must be thoroughly investigated by the court to arrive at the truth. Judicial order must be based on strong foundational facts free from any doubt as regards the correctness and authenticity thereof. In the light of the facts noticed by us the High Court, in our considered view, ought to have investigated the matter a little further instead of summarily holding the objections of the State to be mere claims or assertions of fraud without legal proof.

16. However, in view of our conclusions on the issue of possession of the plaintiffs<sup>TM</sup> predecessors on the date of vesting of the land under the Abolition Act and the continuity of the tenure claimed by the plaintiffs after such vesting under Section 8(1) of the Abolition Act the plaintiffs<sup>TM</sup> suit is liable to be dismissed and the decree granting relief to the plaintiffs is required to be reversed. We, therefore, set aside the judgment and order dated 29.7.2000 passed by the High Court in F.A.No.10 of 2001 and allow Civil Appeal No. 1812/2010 challenging the said order. The remaining civil appeals shall stand decided accordingly. Specifically, the orders passed by the High Court in Writ Petition Nos. 7434 and 7962 of 2008 are set aside whereas Writ Petition No. 8874/2008 shall stand disposed on in terms of the order passed in Civil Appeal No. 1812/2008.

17. All the appeals shall stand decided in the above terms.

[1] 2009 (12) SCC 378