

Hari Behera Vs. Harikrishna Kantha

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Court : Orissa

Decided On : Aug-04-1949

Reported in : AIR1950Ori61

Judge : Narasimham, J.

Acts : Tenancy Law; [Orissa Tenancy Act, 1913](#) - Sections 57 and 236; Orissa Tenancy (Amendment) Act, 1946

Appeal No. : Second Appeal No. 288 of 1947

Appellant : Hari Behera

Respondent : Harikrishna Kantha

Advocate for Def. : G. Dhal, Adv. for S. Misra

Advocate for Pet/Ap. : S.N. Dasgupta, Adv. for P.C. Chatterji

Judgement :

Narasimham, J.

1. The defendant is the appellant in this appeal. The plaintiff purchased occupancy holding No. 83 in which is included sikmi plot No. 868 measuring 39 decimals in extent, from the recorded raiyat by a sale-deed dated 9th April 1945. The defendant was recorded as a Sikimidar of the plot and the plaintiff's suit was for

ejection of the Sikimidar under Section 57 (b), Orissa Tenancy Act, after service of the usual notice to quit.

2. The main defence taken by the defendant was that he was not liable to eviction because the disputed plot (868) was his homestead and that under the provisions of Section 236, Orissa 'Tenancy Act as recently amended by Orissa Act, X [10] of 1946 occupancy right had accrued to him in his homestead. The trial Court accepted this plea but the lower appellate Court held that the homestead of the appellant was limited to that portion of the disputed plot in which his dwelling house stood and that as regards the remaining portion of the plot the appellant had acquired no immunity from eviction by virtue of the amendment made to Rule 236, Orisaa Tenancy Act.

3. It appears to me that neither the Courts nor the parties fully understood the implications of the amendment made to Section 236 by Orissa Act x [10] of 1946. That section (as amended) says that in respect of the homestead in which a tenant ordinarily resides his incidents of tenancy shall be the same as those of an occupancy raiyat. Therefore if a tenant claims the benefit of this section he must first establish that the plot is his homestead and secondly that he ordinarily resides therein. The expression 'homestead' has not been defined either in the amending Act or in the parent Act and the ordinary dictionary meaning of that expression would prevail. There are also some judicial decisions interpreting the same expression occurring in Section 182, Bengal Tenancy Act, and they afford a useful guide. I may refer to *Bamnath Banerjee v. Girish Chandra*, I. L. R. (1941) 1 Gal. 278 : (A. I. R. (28) 1941 Cal. 616) where Mitter J, observed : 'The word 'homestead' occurring in Section 182 means the place where the raiyat actually resides.' To a similar effect are the observations in *Dina Nath v. Sashi Mohan*, 20 C. W. N. 560 ; (A. I. R. (3) 1916 cal. 730) :

'We are further not prepared to accede to the contention of the appellants that the expression homestead' is used in Section 182 as a generic term descriptive of a particular kind of land; on the other hand, we think, it denotes land on which a raiyat has his homestead, that is, land used by him for residential purposes.'

The primary meaning of the expression as given in the Oxford Dictionary is also the same. On behalf of the appellant, Mr. Dasgupta urged that homestead should include not only the site over which the residential house stands but also that portion of the land and appurtenances which are ordinarily and reasonably necessary for its enjoyment. He relied on *Babulal Tiwari v. Mulla Mallah*, A. I. R. (25) 1938 Pat. is : (172 I. C. 835) and some Calcutta decisions cited in that ruling. I do not think there can be any doubt about the proposition that a dwelling house would include not only the house but also the land and its appurtenances which are ordinarily and reasonably necessary for its enjoyment. The expression 'homestead' would, therefore, include not only the site on which the dwelling house stands but also that portion of the land which is ordinarily and reasonably necessary for the enjoyment of the house. It is not easy to lay down any rule about the extent of land that may be reasonably and ordinarily necessary for the enjoyment of a house. It will depend on various factors such as the size of the house, the status and means of its occupant and the place where it is situated. No decision can obviously be given in the absence of any evidence throwing light on these facts.

4. In this case therefore the appellant should have led clear evidence to show that the whole or a specified portion of the plot was reasonably and ordinarily necessary for the enjoyment of the house which according to him is standing on the plot. He must further show that he ordinarily resides in that house. The necessity for this arises chiefly because there is some evidence on record to show that on the adjacent plot No. 869 which is 10 decimals in extent the appellant has a residential house which has been recorded in the settlement as his occupancy holding. It was argued on behalf of the respondent that the house in which the appellant ordinarily resides is in plot No. 869 and in support of this argument the learned advocate has relied on the admission of the appellant himself (D. W. 1) both in his examination-in-chief and in his cross-examination to the effect that his homestead lies contiguous to the land in dispute. Apparently both the Courts have overlooked this answer given by the appellant and have not given due weight to the same.

5. In this case there is no finding by either Court nor is there any clear evidence to indicate the extent of the land that is homestead or else that the appellant was ordinarily residing in the house situate on the plot in dispute (838). It is therefore necessary that the appeal should be remanded for rehearing on the following two points:

'(i) Whether the whole or portion of plot No. 889 would constitute 'homestead' within the meaning of Section 236, Orissa Tenancy Act. If the Court holds that, only a portion of the plot is used as homestead the Court should come to a finding about the actual extent so used and demarcate the same.

(ii) Whether the appellant ordinarily resides in that homestead.'

6. The order of the lower appellate Court is therefore set aside and he is directed to rehear the appeal himself after giving reasonable opportunity to both the parties to adduce further evidence on the aforesaid two points and then dispose of this appeal according to law. Costs would abide the result.