

Narayan Sahu and ors. Vs. Ram Chandra Sahu and ors.

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Court : Orissa

Decided On : Mar-18-1985

Reported in : AIR1985Ori145

Judge : R.C. Patnaik and ;S.C. Mohapatra, JJ.

Acts : Orissa Land Reforms Act, 1960 - Sections 22A

Appeal No. : Original Jurisdiction Case No. 1257 of 1981

Appellant : Narayan Sahu and ors.

Respondent : Ram Chandra Sahu and ors.

Advocate for Def. : P.V. Ramdas, ;R. Mohanty, ;N. Patra, ;N.C. Panigrahi, ;B.K. Nayak, ;Bhimsen Sahu, Advs. (for No. 1) and ;Addl. Standing Counsel (for Nos. 2 and 3)

Advocate for Pet/Ap. : B.B. Rath, ;R.P. Mohapatra and ;M. Misra, Advs.

Judgement :

R.C. Patnaik, J.

1. One NarayanSahu, since deceased and substituted by hislegal representatives, filed an application underSection 15 of the Orissa Land Reforms Act on 4-12-1972 for a declaration that he was tenant ofthe land measuring 8.14 acres in extent

in Mouza Borigaon, district Ganjam, the subject-matter of this litigation, and for a prohibitory order restraining one Radha Sahuani from interfering with his possession. The Revenue Officer passed a prohibitory order. Narayan Sahu also filed an application under Section 15(7) of the Orissa Land Reforms Act for appointment of the Revenue Inspector of Kukudakhandi or Nimakhandi as the receiver of the crops standing on the land. He alleged that he had cultivated the land. Radha Sahuani, who was a rich and influential person of the locality, despite the prohibitory order had threatened to forcibly, oust and remove the crops raised by him. The Revenue Officer appointed the Revenue Inspector, Barigaon, as the receiver. On 9-12-1972, Radha Sahuani entered appearance and filed show cause stating that pursuant to the written agreement dt. 18-7-1972 between the parties, Narayan Sahu relinquished his tenancy right and surrendered the land. Narayan Sahu questioned the validity of the agreement. The case was adjourned to 11-12-1972 for further hearing. The Revenue Officer heard the counsel for the parties and by order dt. 12/13-12-1972 held that Narayan Sahu received the costs of cultivation incurred till 18-7-1972 and surrendered the land. He was of the opinion that the agreement was binding on the parties. Hence, he restrained Narayan Sahu from entering upon the land and interfering with the agricultural operations of Radha Sahuani. Radha Sahuani was allowed to harvest the standing crops. Narayan Sahu assailed the order in appeal. He alleged that the agreement had not been given effect to. It was contingent upon withdrawal of the criminal case launched at the instance of Radha Sahuani. Neither the case had been withdrawn nor had the costs of cultivation incurred by him been paid by Radha Sahuani. The appellate Court was of the view that since the criminal case had not been withdrawn and withdrawal of the case was the consideration, the agreement was not acted upon. It was further of the view that there could not be any relinquishment of tenancy right under an agreement, consideration ; whereof was withdrawal of the criminal case launched at the instance of the land-lady. It upset the order of the Revenue Officer and allowed O.L.R. Appeal No. 1 of 1973 (Annexure-4). Radha Sahuani carried the matter in revision (O.L.R. Revision No. 155 of 1974). During the pendency of the revision, Radha Sahuani passed away. Ram Chandra Sahu, opposite party No. 1, and one Sushila Sahuani filed separate applications seeking substitution as the legal representatives. The revisional Court

accepted the plea of Ram Chndra, the husband of Radha Sahuani, for substitution. Sushila carried the matter to this Court in O.J.C. No. 1915 of 1977 impugning the decision of the revisional Court rejecting her prayer for substitution. The revisional Court further held that Narayan Sahu was the tenant and thus upheld the appellate order. Opposite party No. 1 filed O.J.C. No. 33 of 1978 seeking the quashing of the appellant and the revisional orders. Both the matters were heard analogously. This Court vacated the revisional order and remanded the matter for re-hearing of the revision on merits after deciding the question of substitution. After remand, Ram Chandra and Sushila reached a settlement. Sushila conceded in favour of Ram Chandra, who was substituted in place of Radha Sahuani. On merits, the revisional Court vacated the appellate order and restored that of the Revenue Officer holding that Section 22-A had no application to a case of surrender in July, 1972 and there was surrender of tenancy right by Narayan Sahu. It discharged the receiver and directed release of the land in favour of Ram Chandra.

2. Mr. Manoj Misra, on behalf of the legal representatives substituted in place of Narayan Sahu, has raised two contentions. Firstly, the Revenue Officer committed error in exercise of jurisdiction in disposing of the dispute under Section 15 while disposing of an interlocutory matter under Section 15(7). Secondly, the decisions of the Revenue Officer and the revisional authority are perverse.

3. Mr. N. C. Panigrahi, the learned counsel for opposite party No. 1, has repelled the contentions raised on behalf of the petitioners and strenuously urged that there was no error apparent on the face of the decision of the revisional Court and the Revenue Officer had nowhere indicated that the dispute under Section 15 had been finally disposed of.

4. The object of the Orissa Tenants Relief Act, 1955 and the Orissa Tenants Protection Act, 1948, the predecessors of the Orissa Land Reforms Act, was to protect the tillers of the soil who had no interest in the land from discriminate and arbitrary eviction, until permanent measures were taken by way of agrarian reforms. Thus came the Orissa Land Reforms Act, 1960. It conferred better rights on such tenants and introduced agrarian reforms. Experience of a decade and a

half indicated that eviction of tenants was being effected through the devious device of surrender of tenancy rights by tenants. Extensive surrender would be detrimental to the object of and frustrate the Act. Hence came Section 22-A into the Statute Book by Orissa Act 9 of 1974. It provided safeguards against frivolous and fraudulent surrenders. The object was to protect tenants from unscrupulous landlords who might take resort to the device of surrender for evicting tenants.

5. Doubtless, Section 22-A has no application to the alleged surrender in July, 1972. Narayan Sahu was admittedly a tenant under Radha Sahuani. Extinguishment of tenancy right of Narayan Sahu was sought to be founded on surrender thereof on 18-7-1972, in evidence whereof the deed of surrender executed by both the parties was filed. When a case of extinguishment of tenancy right by surrender thereof is presented, the Courts should be circumspect and carefully scrutinise the plea of surrender advanced by the landlord. The facts and circumstances attendant on and antecedent and subsequent to the surrender are to be minutely considered.

6. The tenant Narayan Sahu came forward with a case that he continued to be the tenant of the land and the deed of surrender had not been acted upon. The deed contained also the reciprocal promises. The institution and pendency of the criminal case is given by way of introduction as if it were the driving force. It has been averred that the criminal case was not withdrawn and the amount, as promised, was not paid by Radha Sahuani. He also alleged coercion and intimidation. Radha Sahuani merely produced the document in support of her plea that Narayan Sahu had surrendered his tenancy right. The controversies were such that a thorough probe was necessary before concluding surrender, i.e. extinguishment of the admitted tenancy right of Narayan Sahu. No evidence was adduced. The observation that as Radha Sahuani was the resident of a different village, there could not be any intimidation or coercion from her side, is not acceptable. Intimidation or coercion may be exercised directly or through an agency as well, even by conduct. The same could be exercised from a distance. The fact that Narayan Sahu was a Sarpanch is not relevant. Such considerations exhibit a tendency towards reaching conclusion on assumptions and surmises. Hence, we cannot agree with the revisional authority. Advisedly, we do not record

a final opinion on this aspect inasmuch as, in our opinion, the issues arising on the pleadings have not been enquired into from their correct legal perspective.

7. The next grievance of the petitioners is that the dispute was finally determined at the interlocutory stage. The learned counsel for the petitioners is under a misapprehension. Nowhere the Revenue Officer has indicated that the main dispute under Section 15 was finally disposed of though while deciding the interlocutory matter, he touched on the issues that had to be decided in the main dispute. Sometimes it is unavoidable, while deciding an interlocutory matter, to touch on the various aspects which are also the moot questions in the main proceeding. But we do not find either from the impugned order or from the record of the case that the Revenue Officer at any stage finally disposed of the main proceeding. There has been no further progress in the main proceeding as the matter was carried to the higher courts in connection with the interlocutory matter.

8. Having regard to the fact that Narayan Sahu was admittedly a tenant till 17-7-1972 and the proceeding before the Revenue Officer commenced on 3-12-1972, we direct that the property be delivered to the petitioners, the legal representatives of Narayan Sahu, for cultivation. The crop shall be appraised before harvesting is done and on the basis of the appraisal, the petitioners shall deposit 50 per cent of the value of the usufructs in Court and the balance 50 per cent shall be appropriated by them towards the costs of cultivation. Out of the 50 per cent of the value deposited in Court, opposite party No. 1 shall withdraw half. The balance shall continue in deposit until the final disposal of the dispute and shall be available to be withdrawn by the ultimately successful party. In case the petitioners fail, possession of the property shall be delivered to Rama Chandra Sahu. The Revenue Officer shall dispose of the proceeding under Section 15 within a period of three months from today after giving the parties adequate opportunity to adduce evidence and of being heard without in any way being influenced by any observation made by us, herein, or by the appellate or the revisional Courts.

9. With the aforesaid observations and directions, the writ application is disposed of. There would be no order as to costs.

S.C. Mohapatra, J.

10. I agree.

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