

Sri. Basanta Kumar Dash Vs. State of Orissa and ors.

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Court : Orissa

Decided On : Jul-10-2006

Reported in : 102(2006)CLT222; 2006(II)OLR243

Judge : P.K. Tripathy, J.

Acts : Orissa Land Reforms Act, 1960 - Sections 37 and 52; [Hindu Succession Act, 1956](#) - Sections 14 and 15

Appeal No. : O.J.C. No. 4217 of 1989

Appellant : Sri. Basanta Kumar Dash

Respondent : State of Orissa and ors.

Advocate for Def. : Addl. Standing Counsel (O.Ps. 1 to 4),; Basudev Mishra,;

Advocate for Pet/Ap. : B. Routray,; S.K. Dash and; U.K. Samal, Advs. in O.J

Judgement :

P.K. Tripathy, J.

1. Both the writ petitions were heard analogously having been preferred against common orders of the Tahasildar-cum-Revenue Officer, Bargarh in O.L.R. Case (Ceiling Proceeding) No. 46 of 1981 and orders of the S.D.O.-cum-O.S.D. (L.R.), Bargarh in O.L.R. Application Nos. 32,35 and 36, all of 1988, and by the Addl.

District Magistrate (L.R.), Sambalpur in O.L.R. Revision No. 22 of 1988 and, therefore, this common judgment shall abide the result in both the writ petitions.

2. Ceiling Proceeding under Chapter-IV of the Orissa Land Reforms Act, 1960 (in short 'the Act') was initiated against the holder of the land being the heirs and successors of Late Lokanath. In course of submission, learned counsel for the petitioner provided the following genealogy and learned counsel for the State, after verification of the L.C.R., did not dispute to correctness of the same. Accordingly the genealogy is as follows:

Late	Lokanath
(1964)	
	Balaram Late Laxmi Parbati Usha Kandi Lata Late Laxman (1960) (d) (d)
(d) (d) Late Kainfula (1981)	_____
Sumitra Urbasi Bipin Subasini (1st wife) (2nd wife) (w) Sailabaia	Basanta
(Adopted) Sanjib Sujit Nirupama Sushama Suruthi	

From the aforesaid genealogy, it is clear that the original owner Lokanath died in the year 1964. It is also not in dispute that his two sons namely Balaram and Laxman had partitioned the properties in metes and bounds much prior to 26.09.1970, the cut off date for severances of status as per the provision in Section 37(b) of the Act. It also appears from the aforesaid genealogy and the admitted fact of the parties that Balaram had two wives, the first wife Sumitra was divorced in 1957 and she is possessing certain extent of land separately. The further fact which is not in dispute is that Laxman the second son of Lokanath died in the year 1960 and his widow Kainfula died in 1981, but the said Kainfula was in separate possession of certain landed properties and after her death the same is to devolve on her Class-1 heirs, i.e., Bipina and Subasini.

3. Another admitted fact amongst the parties is that a ceiling proceeding vide O.L.R. Case No. 3 of 1977 was initiated against the parties and was disposed of, but certain lands held by Sumitra and Kainfula were not included therein. As against the order passed in that ceiling proceeding, one Basudev Tripathy filed an appeal and the appellate authority made certain observation and on the basis of

that observation of the appellate authority that the present ceiling proceeding, i.e., O.L.R. Case No. 46 of 1981 was again initiated. Learned counsel for the petitioners while challenging the impugned order, contended that the second O.L.R. proceeding is illegal and not maintainable and consequentially the impugned orders of the Courts below (Revenue Authorities) are liable to be quashed. But learned counsel for the State inviting attention of this Court to Section 52 of the Act, rightly argued that the present ceiling proceeding is maintainable because of non-inclusion of certain properties in the earlier ceiling proceeding Since Section 52 of the Act permits such a course in such a situation, therefore, argument of the petitioner in the above manner bears no merit. Accordingly, such argument of the petitioners is rejected.

4. In the ceiling proceeding learned Tahasildar has allotted 10 standard acres of land to the family of Balaram together with the divorced wife Sumitra and found a surplus of Ac. 5.93 decimals. Similarly he allotted 12 standard acres to the family of Bipin and declared a surplus of Ac. 7.19 decimals. Grievance of the parties is that share of Sumitra and Kainfula which are owned and possessed by them separately, is required to be excluded and the Courts below including the appellate and the revisional authority wrongly and illegally refused to exclude the same. Learned counsel for the State while unable to defend that lacuna in the consideration of the Courts below, argued that the actual state of affairs in that respect can be ascertained on a further proper enquiry and therefore the matter should be remitted back to the Tahsildar with clear direction.

5. Because of the oldness of the litigation, a matter on remand could have been avoided if there would have been adequate materials on the L.C.R. to take a decision by this Court. Since such materials are not available on record and apart from that it also appears that neither Sumitra nor Subasini (daughter of Laxman) were noticed L; participate in the proceeding, therefore, it is appropriate to adhere to the contention of learned Standing Counsel for the State.

6. So far as the case of Balaram is concerned, 5.94 standard acres of land have been found to be surplus, 7.19 acres of land belonging to Sumitra were included and according to the petitioner the surplus is on account of inclusion of that 7.19

acres. Learned Tahsildar as well as the appellate and revisional Court did not incline to exclude the property of Sumitra on the ground that she still continues to be wife of Balaram, in as much as in a sale transaction she has described herself as the wife of Balaram. Mere description of the name as the wife does not give her the status of the wife so as to exclude her status as the divorced wife. Therefore, when her divorce in the year 1957 and receiving permanent alimony is not in dispute, she cannot come within the fold of the family as described in Section 37(b) of the stays together with Balaram and/or possesses the property jointly with Balaram. When Sumitra had separated herself as a divorced wife in 1957 therefore she does not come as a member of the family within the meaning of Section 37(b) of the Act. Therefore, the Tahsildar is to exclude the property held by Sumitra from the ceiling proceeding so far as Balaram is concerned and thereafter to find out if there is any excess land beyond the limit of ceiling to be vested with the State.

7. So far as Laxman's branch is concerned, learned Tahsildar has not conducted any enquiry if Kainfula possessed her mother's property. After her death, according to Sections 14 and 15 of the [Hindu Succession Act, 1956](#), both Bipin and Subasini succeeded to that property. Therefore, the extent of succession to that property by Subasini was never considered. Subasini being a married daughter could not have been included in the family of Bipin. Therefore, any property held by her out of the property of Kainfula (having been succeeded by her from her mother) cannot be included in the property of Bipin in the ceiling proceeding. Therefore, learned Tahsildar has to conduct an enquiry in that respect with due notice to Subasini or any person possessing that land on her behalf and to decide if the branch of Laxman, i.e., Bipin or Subasini or any of them possess the ceiling surplus land. In that respect it is further indicated that Bipin has been granted 12 standard acres, but according to the genealogy Bipin, his wife and five children being seven in number are entitled to 14 standard acres and accordingly they should be allotted 14 standard acres. The aforesaid aspect is also to be worked out by the Tahsildar.

8. For the reasons indicated above, while setting aside the impugned order of the Tahsildar in confirming the draft statement in O.L.R. Case No. 46 of 1981 and the order of the appellate and the revisional authorities (as noted above), the said

ceiling proceeding is remanded to the Court of Tahsildar, Bargarh to consider the aforesaid aspect and dispose of the ceiling proceeding afresh. It would be appropriate for learned Tahsildar, if necessary, to make a further enquiry. In the process of enquiry if any evidence is adduced from the side of the State, then the notice should be provided with the opportunity to cross-examine the witnesses on the statements made against them and to rebut the documents which is relied on by th. 3 State. In other words, proper opportunity be provided to them to meet the evidence relied on by the State before they are called upon to adduce their rebuttal evidence. Since the proceeding is old enough, learned Tahsildar shall do well to expedite the matter, for early disposal of the ceiling proceeding.

9. In the result, the orders of the Tahsildar-cum-Revenue Officer in O.L.R. Case (Ceiling Proceeding) No. 46 of 1981, S.D.O.-cum-O.S.D. (L.R.), Bargarh in O.L.R. Application Nos. 32, 35 & 36, all of 1988 and Addl. District Magistrate (L.R.), Sambalpur in O.L.R. Revision No. 22 of 1988 are set aside and O.L.R. Case No. 46 of 1981 is remanded as per the aforesaid discussion, observation and direction. No cost.