

(2016) 02 OHC CK 0034

ORISSA HIGH COURT

Case No: OJC No. 12110 of 1999

Paramananda Swain

APPELLANT

Vs

Commissioner Consolidation and
Others

RESPONDENT

Date of Decision: Feb. 18, 2016

Acts Referred:

- Constitution of India, 1950 - Article 226

Hon'ble Judges: Dr. Akshaya Kumar Rath, J.

Bench: Single Bench

Advocate: Soumya Mishra, Advocate, for the Appellant; P.C. Panda, A.G.A., for the Respondent

Final Decision: Dismissed

Judgement

Dr. Akshaya Kumar Rath, J.

1. This petition challenges the order dated 16.10.1981 passed by the Consolidation Officer in Objection Case No. 1149 of 1979, order dated 14.5.1982 passed by the Deputy Director, Consolidation, Bhubaneswar in Appeal Case Nos. 19 of 1982 and 483 of 1981 and order dated 7.6.1997 passed by the Commissioner Consolidation, Bhubaneswar in Revision Case Nos. 662/83 and 122/87, vide Annexures 3,4 and 5 respectively. By order dated 7.6.1997, the Commissioner Consolidation, Bhubaneswar dismissed the revision filed by the petitioner and allowed the revision filed by the opposite party No. 4.

2. The case of the petitioners is that as per sabik record-of-right published in the year 1927-28, sabik khata No. 212 measuring an area of Ac.3.40 dec. was recorded in the name of Udayanath Mohanty and Kasinath Mohanty. Bikei Swain and Madan Swain were sikim tenants under them in respect of the aforesaid holding. The area consists of 23 plots. Subsequently, Udayanath and Kasinath sold the entire area to Adikanda Mohanty. Thereafter, Adikanda sold the same to Paramananda Swain,

predecessor-in-interest of the petitioners (hereinafter referred to as "the petitioner") and Dharmananda Swain jointly on 12.8.1936. On a partition between the petitioner and Dharmananda, each got Ac.1.70 dec. and accordingly they possessed the land separately. On 31.8.1937, the petitioner purchased the sikim right from Madan in respect of 8 annas share by means of registered sale deed and became the owner in possession of Ac.1.70 dec. Subsequently, on 5.11.1947, Banamali Swain, another sikim tenant, executed the registered sale deed in favour of the petitioner; whereafter the petitioner became the owner of the entire holding. On 16.4.1958, the petitioner executed a sale deed in favour of Kasinath, predecessor-in-interest of opposite parties 4/a to 4/j in respect of the area of Ac.2.77 dec. out of total Ac.4.89 dec. appertaining to khata No. 178, Ac.1.37 dec. out of total Ac.13.65 decs. under khata No. 132, Ac.0.39 dec. out of total Ac.2.37 dec. under khata No. 108, Ac.0.33 1/3 dec. out of total Ac.0.50 dec. under khata No. 256, Ac.1.70 2/3 out of total Ac.2.56 dec. under khata No. 50. It is further stated that by mistake, the lands covered under sabik khata No. 212 corresponding to hal khata No. 338, Ac.1.70 dec. out of Ac.3.40 dec. was mentioned in the schedule of the sale deed. The petitioner continued to possess the said land peacefully after execution of the sale deed. He used to pay rent.

3. While the matter stood thus, consolidation operation in the area, where the land falls, started. The land register was prepared in the name of the petitioner in respect of the disputed land. Opposite party No. 4 filed Objection Case No. 918 of 1979 before the Assistant Consolidation Officer, Garhatusina Camp to record his name in respect of the lands purchased by him by means of registered sale deed No. 2305 dated 16.4.1958. The Assistant Consolidation Officer allowed the claim of opposite party No. 4 on 17.12.1979. Against the said order, petitioner filed appeal before the Deputy Director, Consolidation, Bhubaneswar. He remanded the matter to the Consolidation Officer for fresh adjudication. After remand, Consolidation Officer tagged two objection cases i.e. Objection Case No. 917 filed by opposite party No. 4 and another Objection Case No. 1149 filed by Rajiv Swain and Hari Swain. The land covered in both the objection cases relates to sabik khata No. 212 corresponding to hal khata No. 338. So far as objection filed by Rajiv and Hari is concerned, their claim was against Dharmananda alone, the other co-sharer of the petitioner, since they were tenants under him. The objection case filed by him had no bearing with the case of the petitioner. In course of hearing, the Consolidation Officer directed the Amin to make an enquiry about the possession of the land. The Amin conducted the field enquiry and found that opposite party No. 4 was not in possession of the land. He found that the petitioner was in possession of the land. By order dated 16.10.1981, the Consolidation Officer came to hold that the petitioner was in possession of the land. There was no partition amongst the co-sharers. It was further held that there was no reason to delete the note of possession of the petitioner. Against the said order, petitioner filed Appeal Case No. 19 of 1982, wherein opposite party No. 4 filed Appeal Case No. 483 of 1981 before the Deputy

Director Consolidation, Bhubaneswar. The appellate authority by order dated 14.5.1982 dismissed the appeal and thereby confirmed the order passed by the Consolidation Officer. Against the said order, petitioner filed Revision Case No. 122 of 1987. Opposite party No. 4 also filed Revision Case No. 662 of 1983 before the Commissioner, Consolidation, Bhubaneswar. The Commissioner by order dated 7.6.1997 allowed the revision filed by opposite party No. 4 and dismissed the revision filed by the petitioner. Both the orders are assailed in this case.

4. Pursuant to issuance of notice, a counter affidavit has been filed by opposite party No. 4. The sum and substance of the case of the opposite party No. 4 is that the dispute centres round the Sabik Khata No. 212 as per ROR published in the year 1927-28. Udayanath and Kasinath were the recorded tenants of the suit land. Bikei and Madan were Sikim tenants under Udayanath and Kasinath in respect of the entire holdings. Ac.3.40 dec. under kahta No. 212 consists of 23 plots. Subsequently, Udayanath and Kasinath sold the entire holding to Adikanda. He sold the entire suit plot to the petitioner and Dharamananda jointly on 12.8.1936. In an amicable partition between the petitioner and Dharamananda, each got Ac.1.70 dec. and accordingly they were in possession of their respective shares separately. On 31.8.1937, the petitioner purchased the sikim right from Madan. On 5.11.1947, he purchased the other sikim right from Banamali in respect of khata No. 212 by registered sale deed and became owner in possession of the holding covering an area of Ac.1.70 dec. The petitioner executed the registered sale deed on 16.4.1958 in favour of Kasinath Swain, predecessor-in-interest of opposite parties 4(a) to 4(j) for a consideration of Rs. 2000/- comprising several plots with a total area of Ac.8.73 3/6 dec. under different khata Nos. 178, 132, 108, 156, 212 and 50. Khata No. 212 consists of 23 plots. It is stated that a portion of land sold from each plot was also mentioned in the sale deed in respect of khata No. 212. Stand of the petitioner is that by mistake the lands covered under sabik khata No. 212 corresponding to hal khata No. 338, Ac.1.70 dec. was wrongly incorporated in the sale deed, is not tenable under law. It is further stated that the suit land was never in possession of the petitioner after execution of the sale deed. Opposite party No. 4 has been cultivating the entire purchased property including the suit land after execution of the sale deed. The suit property was in the joint holding of the petitioner and Dharmananda. Petitioner sold his share in favour of the opposite party No. 4. There was an amicable partition between the petitioner and Dharmananda but there was no registered partition deed to that effect nor any mutation proceeding was initiated. Therefore, the suit land used to remain in joint holding and the petitioner was paying rent of Ac.3.40 dec. and some times half of the lands. It is further stated that the same cannot confer him the right for entitlement of the property which he had sold in the year 1958. Opposite party No. 4 is also paying rent in respect of the suit land since 23.3.2002.

5. Heard Mr. Soumya Mishra on behalf of Mr. S.P. Mishra, Senior Advocate appearing for the petitioners, Mr. Panda, learned Addl. Government Advocate for

opposite parties 1 to 3 and Mr. Subrat Mishra, learned counsel for opposite party No. 4.

6. The scope and jurisdiction of the High Court in a writ of certiorari is no more res integra. The Constitution Bench of the apex Court in the case of Syed Yakoob Vrs. K.S. Radhakrishna and others, , AIR 1964 SC 477, in paragraphs 7 and 8 of the report, held as follows:-

"(7) The question about the limits of the jurisdiction of High Courts in issuing a writ of certiorari under Art. 226 has been frequently considered by this Court and the true legal position in that behalf is no longer in doubt. A writ of certiorari can be issued for correcting errors of jurisdiction committed by inferior courts or tribunals; these are cases where orders are passed by inferior courts or tribunals without jurisdiction, or in excess of it, or as a result of failure to exercise jurisdictions. A writ can similarly be issued where in exercise of jurisdiction conferred on it, the Court or Tribunal acts illegally or improperly, as for instance, it decides a question without giving an opportunity to be heard to the party affected by the order, or where the procedure adopted in dealing with the dispute is opposed to principles of natural justice. There is, however, no doubt that the jurisdiction to issue a writ of certiorari is a supervisory jurisdiction and the Court exercising it is not entitled to act as an appellate Court. This limitation necessarily means that findings of fact reached by the inferior Court or Tribunal as a result of the appreciation of evidence cannot be reopened or questioned in writ proceedings. An error of law which is apparent on the face of the record can be corrected by a writ, but not an error of fact, however grave it may appear to be. In regard to a finding of fact recorded by the Tribunal, a writ of certiorari can be issued if it is shown that in recording the said finding, the Tribunal had erroneously refused to admit admissible and material evidence, or had erroneously admitted inadmissible evidence which has influenced the impugned finding. Similarly, if a finding of fact is based on no evidence, that would be regarded as an error of law which can be corrected by a writ of certiorari. In dealing with this category of cases, however, we must always bear in mind that a finding of fact recorded by the Tribunal cannot be challenged in proceedings for a writ of certiorari on the ground that the relevant and material evidence adduced before the Tribunal was" insufficient or inadequate to sustain the impugned finding. The adequacy or sufficiency of evidence led on a point and the inference of fact to be drawn from the said finding are within the exclusive jurisdiction of the Tribunal, and the said points cannot be agitated before a writ Court. It is within these limits that the jurisdiction conferred on the High Courts under Art. 226 to issue a writ of certiorari can be legitimately exercised (vide Hari Vishnu Kamath v. Ahmed Ishaque, , 1955-I SCR 1104 : ((S) AIR 1955 SC 233); Nagendra Nath v. Commr. of Hills Division, , 1958 SCR 1240 : (AIR 1958 SC 398) and Kaushalya Devi v. Bachittar Singh, , AIR 1960 SC 1168.

(8) It is, of course, not easy to define or adequately describe what an error of law apparent on the face of the record means. What can be corrected by a writ has to be an error of law; but it must be such an error of law as can be regarded as one which is apparent on the face of the record. Where it is manifest or clear that the conclusion of law recorded by an inferior Court or Tribunal is based on an obvious mis-interpretation of the relevant statutory provision, or sometimes in ignorance of it, or may be, even in disregard of it, or is expressly founded on reasons which are wrong in law, the said conclusion can be corrected by a writ of certiorari. In all these cases, the impugned conclusion should be so plainly inconsistent with the relevant statutory provision that no difficulty is experienced by the High Court in holding that the said error of law is apparent on the face of the record....."

7. On the anvil of the decision cited supra, the case of the petitioner may be examined.

8. The dispute centres round the Sabik Khata No. 212 as per ROR published in the year 1927-28. Udayanath and Kasinath were the recorded tenants of the suit land. Bikei and Madan were the sikim tenants under Udayanath and Kasinath in respect of the entire holdings. Kahta No. 212 consists of 23 plots. Subsequently, Udayanath and Kasinath sold the entire holdings to Adikanda. He sold the entire suit plot to the petitioner and Dharamananda jointly on 12.8.1936. In an amicable partition between the petitioner and Dharamananda, each got Ac.1.70 dec. and accordingly they possessed and cultivated their respective shares separately. There were two sikim tenants in respect of the suit land. The petitioner purchased the sikim right from Madan and Banamali on 31.8.1937 and 5.11.1947 respectively by means of registered sale deeds. Thus he became the absolute owner in possession of half share of the schedule land. While the matter stood thus, the petitioner sold the land in favour of opposite party No. 4 by means of registered sale deed on 16.4.1958 for a consideration of Rs. 2000/- in respect of an area of Ac.1.70 dec. appertaining to sabik khata No. 212 along with other lands. The Commissioner has rightly held that the consolidation authority has lacked power to record the forcible possession.

9. The submission of Mr. Soumya Mishra, learned counsel for the petitioner, that the petitioner has perfected the title by way of adverse possession is difficult to fathom.

10. In the celebrated judgment, the Privy Council in the Secretary of State v. Debendra Lal Khan, , AIR 1934 Privy Council 23 held that the classical requirement of adverse possession is that the possession should be nec vi nec clam nec precario. Their Lordships quoted with approval the decision in the case of Radhamoni Devi v. The Collector of Khulna and others, Indian Appeals 1900 Vol. XXVII at page 140 that "the possession required must be adequate in continuity, in publicity, and in extent to shew that it is possession adverse to the competitor".

11. Except bald assertion, there is no material on record to come to a finding that the petitioner was in possession of the land peacefully and continuously for more

than the statutory period.

12. Judging the case from any angle, no case is made out for interference. The view taken by the Commissioner Consolidation cannot be dubbed as arbitrary, perfunctory or flawed.

The petition, sans any merit, is dismissed.