



IN THE HIGH COURT OF ORISSA AT CUTTACK

SA No.11 of 1992

[From the judgment and decree dated 28.09.1991 and 28.10.1991 respectively passed by learned Addl. District Judge, Balangir in T.A. No.3/16 of 1989-90 arising out of judgment and decree dated 29.09.1988 and 14.10.1988 respectively passed by learned Munsif, Balangir in T.S. No.169 of 1982]

AFR State of Odisha & Another Appellants

-Versus-

Bhagat Prasad Patel and Others Respondents

Advocate(s) appeared in this case:

For the Appellants :Smt. Jyotsnamayee Sahoo,
Addl. Standing Counsel.

For Respondents : M/s.N.K. Sahu, Sr. Adv.
with M/s. B. Swain, S. Sahu,
A. Modi and S. Sahoo, Advocates

CORAM:

JUSTICE SASHIKANTA MISHRA

JUDGMENT

27th February, 2026

SASHIKANTA MISHRA, J.

This is a defendants' appeal against a partly confirming and partly reversing judgment. The judgment dated 28.09.1991 followed by decree passed by learned



Additional District Judge, Balangir in Title Appeal No.3/16 of 1989-90 is under challenge. Said appeal was filed against judgment dated 29.09.1988 followed by decree passed by learned Munsif, Balangir in Title Suit No.169 of 1982. As per the said judgment, the suit of the plaintiffs was decreed and the defendants were enjoined from disturbing their right. The relief of declaration of title and possession was refused. Thus, while the defendants challenged the declaration of the fishery right of the plaintiffs in the above-mentioned appeal, the plaintiffs preferred cross appeal against refusal of the relief of declaration of title and possession.

2. For convenience, the parties are referred to as per their respective status before the Trial Court.

3. The suit in question was filed by the plaintiffs claiming declaration of title, confirmation of possession over the suit land or in alternative, recovery of possession along with permanent injunction.

4. The plaintiffs' case, briefly stated, is that the suit land was *Rayati* land belonging to their grandfather, Rushi



Patel, who excavated a water reservoir and subsequently made improvements thereon. The plaintiffs being his successors inherited the property and are in exclusive possession of the same, using its water for irrigation and pisciculture. The ex-Patna State decided to record all water reservoirs of the State in Jalchar Khata in 1936 settlement. Since there was mass agitation, the erstwhile Government issued a proclamation inviting objections from tenants. The father of the plaintiffs submitted objection. The Superintendent of Land Records (SLR) considered the objection and recorded the right of the plaintiffs. Subsequently, the Government illegally transferred the land to Bhaler Grama Panchayat for pisciculture ignoring the possession of the plaintiffs. Since the Panchayat interfered with their right, the plaintiffs filed the suit.

5. Defendant No.1, being the State of Odisha and Defendant No.2, being the Bhaler Grama Panchayat contested the suit taking similar stand. It is their case that by order of the Government of the erstwhile Patna State, all



water reservoirs were recorded as Jalchar. Subsequently, the tanks were transferred to Grama Panchayats. The SLR had no authority to declare the right of any person. Bhaler Grama Panchayat is under possession of the suit land with fishery rights.

6. The Trial Court framed 12 issues for determination.

7. With regard to issues Nos. 1, 2, 4 and 5, the Trial Court held that there was evidence to show that the plaintiffs' grandfather was the Rayat in respect of the suit land having excavated the same incurring expenditure but no title was ever acquired by referring to R.K. Ramadyani's report of Land Tenure and Revenue System of the Odisha and Chhattisgarh States. The Trial Court was inclined to hold that the tanks excavated in Rayati land cannot become the absolute property of the excavators and that after the settlement period they would become public lands. The SLR directed to issue *Patta* in favour of the plaintiffs' father in respect of the fishery right. There was evidence to show that the plaintiffs' father was doing pisciculture. After merger, the



fishery right of the plaintiffs was recognized. It was thus held that the plaintiffs' grandfather is not the title holder of the tank by virtue of his excavation of the same as per the revenue laws prevalent in the State of Patna, though he has fishery rights. The Trial Court was not inclined to accept the plea of the State that the suit tank was ever vested with Bhaler Grama Panchayat. So, the fishery right of the plaintiffs cannot be interfered with and that Bhaler Grama Panchayat cannot be said to have acquired any right. Basically, on such findings, the suit was decreed in part by declaring the fishery right of the plaintiffs while refusing the relief of declaration of their title.

8. In the first appeal filed by the defendants and cross appeal filed by the plaintiffs, the First Appellate Court held that the suit property was not Bhogra or Khamar land but was a defendants' rent land. Under the Odisha Merged State Laws Act, 1950, full right and ownership was given to an occupancy tenant. The Plaintiffs' ancestors were the occupancy Rayats and the entry of 1936 settlement regarding



recording of the land in Jalchar Khata was never acted upon. Order was issued to issue *Patta* in favour of the plaintiffs' ancestors on the objection filed by him. Rent was also collected from him. The right of an occupancy tenant was never affected and he continues to be a Rayat. The entry in the RoR does not give rise to title or right on the State. On such findings, the First Appellate Court held that the plaintiffs have right, title and interest over the suit land along with possession exercising the right of fishing and irrigation. Thus, the appeal preferred by the State was dismissed and the cross appeal of the plaintiffs was allowed by declaring plaintiffs' title including right of fishing and irrigation over the suit land, confirmation of possession and permanent injunction.

9. Being further aggrieved, the defendants have preferred the present second appeal, which was admitted on the following substantial question of law;

“(i) Whether on account of vesting of land under Orissa Estate Abolition Act, the tank shall be treated to have been vested in the State Government?”



(ii) Whether right to catch and carry away the fish being profit a prendre having valued more than Rs.100 required compulsorily registrable?

(iii) Whether on the absence of details of the land particulars in Ext.4 can confer a fishery right in favour of the plaintiff merely on the basis of the order dated 14.09.1951 passed by the Superintendent of Land Records in Fishery Case No.53/50?

(iv) Whether the lower appellate court is justified in decreeing the plaintiff's suit when ex-state of Bolangir merged in the State of Odisha on 01.01.1948 and Thekadire system was abolished on 01.04.1950?

(v) Whether the lower appellate court can make out a new case that the plaintiff has got occupancy right in the absence of any pleadings/issues and an opportunity to the defendant to deny such claim? (5)

(vi) Whether the first appellate court is justified in decreeing the plaintiff's suit basing upon the cross objection filed by the respondent without filing a separate appeal challenging the part decree?"

10. Heard, Ms. J. Sahoo, learned Additional Standing Counsel for the State-appellant and Mr. S. Sahoo, learned Counsel appearing for the plaintiff-respondents.

11. Ms. Sahoo would submit that the grandfather of the plaintiffs was never an occupancy tenant but was a cultivator under the erstwhile Thekadar, Hrusikesh Bhoi and the property was the Gaunti Rayati land of said Thekadar. As per the provisions of the Patna State Tenancy Act, 1944, a tenant is liable to pay rent but does not include a farmer. The



plaintiffs never proved that their predecessor was an occupancy tenant under Thekadar, Hrusikesh Bhoi. As such, the question of acquisition of tenancy right does not arise. Ms. Sahoo further argues that even assuming that Rushi Patel had some right over the suit land/tank, the same stood extinguished in view of merger of the Patna State and abolition of the Thekadar system. Only fishery rights have been confirmed by the SLR. In any case, SLR was not competent to confer any right. Ms. Sahoo further argues that the very fact that the grandfather of the plaintiffs applied before the SDO for declaration of his fishery right, which was subsequently transferred to the SLR, implies that his claim of being an occupancy tenant was adversely affected after merger. The tank in question may have been excavated for the use of the villagers. Mere acceptance of rent by the State cannot confer any occupancy interest.

12. Per contra, Mr. Sahoo would argue referring to different provisions of the Patna State tenancy Act that an occupancy tenant was entitled to make improvement of his holding including excavation of tank for storage of water for



irrigation etc. The fact that Rushi Patel excavated the tank for agricultural purposes establishes that he was an occupancy tenant. Section 7 of the Odisha Merged State Laws Act gives full right and ownership to an occupancy tenant. Therefore, the First Appellate Court rightly interfered with the judgment and decree passed by the learned Munsif and decreed the suit of the plaintiffs. On the substantial questions of law framed by this Court, Mr. Sahoo would submit that the plaintiffs never filed the suit for declaration of their fishery right but specifically sought for declaration of their right, title and interest over the suit land and confirmation of possession etc. Therefore, no registered document showing such right was necessary. On the substantial question of law Nos. iii, iv and v, the Ruler of Patna State notified that the tanks constructed by the Rayats or Thekadar on their own land at their own expenses will be excluded from Jalchar Khata. The plaintiffs' grandfather staked his claim of title over the suit land way back on 03.03.1942 which was recognised and thereafter Patta was issued in his favour and he paid rent.



13. After hearing learned counsel for the parties at length and on going through the materials on record, this Court feels it proper to address certain basic issues which would help answer the substantial questions of law framed effectively.

14. The first issue that arises for consideration is the status of Rushi Patel vis-à-vis the suit land. As per the ROR of 1916 vide Ext-12, Rushi Patel was recorded as a Rayat. It is claimed that Rushi Patel began excavating a *munda* (tank) in 1908 but when exactly he acquired possession of land has not been placed before the Court. Be that as it may, Ext-12 is the earliest record showing Rushi Patel as being the 'Rayat' of the land. The *Jamabandi* Register (Ext-13) of 1916 also corroborates the above fact inasmuch as it records Rushi Patel as a Rayat. The State however, contends that Rushi Patel was a mere cultivator under the erstwhile Thekadar, Hrusikesh Bhoi. At this stage, reference to some of the provisions of Patna State Tenancy Act, 1944 would be profitable. Section -2(xiv) defines 'Tenant (rayat)' as follows:

““Tenant” (rayat) means primarily a person who holds land for the purpose of cultivating it by himself



or by the members of his family or by hired servants and is, or but for a special contract, would be liable to pay rent or cesses for such land includes also successors in interest of such person but not a Farmer or Thekadar.

Section 3 specifies six classes of tenants (rayats), namely;

- “1. Occupancy tenant*
- 2. Ordinary tenant*
- 3. Under tenant*
- 4. Village service tenant*
- 5. Other service tenant*
- 6. Maufi service tenant”*

Section 4, which is relevant to the present case, reads as follows;

“Every tenant not being an ordinary tenant or under tenant shall be deemed to be an occupancy tenant.”

It is not in dispute that the land in question is not bhogra land. Section 6 grants certain rights to the occupancy tenant in respect of the land. Section 6(ii)(b) reads as follows;

“The excavation of tank or the digging of well, water channel and other works of the same nature for the storage of water necessary for the purpose of agriculture or purposes incidental thereto.”

Section 18 provides that an occupancy tenant shall not ordinarily be liable for ejectment from his holding.

“An occupancy tenant shall be liable for ejectment from his holding except from so much of his homestead land is recorded rent-free on any of



the following grounds by order of a Revenue Officer;

- (i) that he has failed to pay rent and cesses in respect of his holding; or.*
- (ii) that he has failed to discharge the liabilities incidental to his tenancy and to observe the rules relating to his lands as prescribed under this Act; or*
- (iii) that he has permanently diverted his lands to non-agricultural purpose;*

To reiterate, Rushi Patel not being an ordinary tenant nor under-tenant is protected from ejectment by the provisions of Section 18. The Patna State Tenancy Act, 1944 stood repealed by virtue of Section 5 of the Odisha Merged State (Laws) Act, 1950. Section 7 of the said Act protected the rights of occupancy tenant as recognized in the tenancy laws of the merged State, in the present case, the Patna State. Section 7 is quoted hereinbelow.

“7. Modification of Tenancy laws in force in the merged States: *Notwithstanding anything contained in the tenancy laws of the merged States as continued in force by virtue of Article 4 of the States Merger (Governor’s Province) Order, 1949*

(a) all suits and proceedings between landlord and tenants such shall be instituted and tried in revenue courts.

Explanation-In this clause, the expression “landlord” shall mean a person immediately under whom a tenant holds land, and the expression “tenant” shall mean a person who holds land under another person and is or, but for a special contract would be liable to pay rent for that land to that person.



(b) an occupancy tenant shall be entitled-

(i) to freely transfer his holding;

(ii) to have full right over all kinds of trees standing on his holding;

(iii) to use the land comprised in the holding in any manner which does not materially impair the value of the land or render it unfit for the purpose of the tenancy,

(iv) to the benefit of his presumption by any Court that the rent for the time being payable by him is fair and equitable until the contrary is proved;

Explanation :- (i) An “occupancy tenant” means tenant or a raiyat having occupancy right in his holding under the tenancy laws continued in force in this merged States;

(ii) An “aboriginal tribe” means any tribe that may, from time to time, be notified as such by the State Government;

(c) Where a rent of an occupancy tenant is payable in accordance with the tenancy laws continued in force in the merged State concerned;

(d) an occupancy tenant shall not be liable to eviction from his holding except in execution of a decree for ejectment passed on the ground that

(i) he has used the land comprised in his holding in a manner which renders it unfit for the purposes of the tenancy, or

(ii) he has broken a condition consistent with the provisions of the tenancy laws in force in the merged State concerned and on breach of which he is under the terms of contract between himself and his landlord, liable to be ejected:



(e) the interest of an occupancy tenant in his holding shall on his death pass by inheritance or survivorship in accordance with his personal law;

(f) a “Sukhbasi” shall be entitled to the rights of an occupancy tenant over his homestead notwithstanding any law or custom to the contrary;

Explanation-A “Sukhabasi” means any person holding only homestead whether or not recorded in the settlements paper as “Ghar”, “Bari” or “Gharbari” or a person who is granted land by the Thekadar or by a competent revenue officer for the purpose of using it as homestead.

(g) When land is held as service-tenure, either under the Rule or any member of his family, the liability of the holder of such tenure to render service for the use and occupation thereof shall cease, and he shall, on payment of such rent as may be assessed by the (State) Government as fair and equitable, acquire occupancy right therein.

(h) When a person holds khamar, nij-jote or any other private lands of a Ruler, which has been recognised as such by the (State) Government, he shall not be liable to ejectment but shall be liable to pay such fair and equitable rent as may be fixed by the 1(Subdivisional Officer having jurisdiction or any other officer not below the rank of Sub-Deputy Collector authorised by the Collector in this behalf) and thereupon he shall acquire right of occupancy in respect of such lands:

[Explanation :-For the purpose of this Section. Subdivisional Officer shall mean the principal revenue officer of a Subdivision.]”

So, on a conjoint reading of the provisions of the Patna State Tenancy Act and the Orissa Merged State (Laws) Act, 1950 it becomes clear that the right of an occupancy tenant as



confirmed by the former Act continues even after enactment of the latter Act.

15. Such being the position of law relating to the right of an occupancy tenant, there is no way by which such right could be taken away contrary to the provisions of Section 18. Be it noted that it is not the case of the State that Rushi Patel's case was covered under any of the situations indicated in Section 18. Therefore, notwithstanding the recording of the land in Jalachar Khata in the 1936 settlement, the right acquired by him cannot be said to have been extinguished. Reading of the impugned judgment shows that the First Appellate Court was alive to the above position of law to hold as follows:

To reiterate, the suit property in question were not Bhogra or Khamar land, but it was a tenanted land. Under the Patna State Tenancy Act, 1944 even an ordinary tenant cannot be dispossessed if he does not hold any bhogra or Khamar land much less an occupancy tenant. Under the Orissa Merged States Laws Act, 1950 in Section 7 full right and ownership was given to an occupancy tenant."

16. From what has been discussed above, this Court finds no reason to differ with the above finding.



17. The First Appellate Court, analysing the oral and documentary evidence on record finally arrived at the following conclusion;

“26. Thus, it is evident from the evidence on record that the plaintiffs' ancestors are the occupancy raiyats of the said plots wherein they have excavated a reservoir for agricultural purpose. The entry of 1936 settlement was subject to dispute and was not acted upon. Further order was issued to issue patta in favour of the plaintiffs ancestors on the objection filed by him. Rent was collected from him. Evidently right of an occupancy tenant has not been affected and he continues to be a raiyat. An entry in the R.O.R. does not give rise a title or right on the State. In the decision of Salim Mahammad -versus- Cuttack Municipality, reported in 15 2 (1949) C.L.T. page 39 Their Lordship held at page. 47" in so far as the municipality claim title to the disputed passage on the strength of the current settlement entry, the claim must be negatived". So in the light of the aforesaid decision, the claim of the State should be negatived.”

18. This Court fully concurs with such conclusion for the reasons already indicated.

19. Having held so, this Court would answer the substantial questions of law as follows:

Question No.(i)

Even on abolition of estate and vesting of the same in the State of Odisha, the right of the Rayat (tenant) continued as before and stood protected. In fact, in the



instant case, there is overwhelming evidence on record to show that the plaintiff's ancestor was acknowledged as a tenant by accepting rent paid by him. Therefore, vesting of the estate shall not operate adversely to his interest. In the case of ***Special Secretary to Govt. in General Administration Deptt., Odisha, Bhubaneswar & Another vs. Shri Bansidhar Naik***¹ this Court held that if a person was in physical possession of a land on the date of vesting of the estate as a tenant under the intermediary, he shall hold the land on the same right, as he was entitled immediately before the vesting. Further, in the case of ***Rabindranath Dikhit vs. Padma Charan Samanta Singhar, after him Saila Samanta Singhar and Ors***² this Court held that a tenant inducted prior to vesting and who is in possession of the land as a tenant on the date of vesting would continue as a tenant under the State.

Question No.(ii)

Since the suit was filed for declaration of title over the suit land with fishing rights as an incident to such

¹ (2007) 2 OLR 557 : (2007) CLT 278 Supp

² (2005) 2 OLR 491 : (2006) 101 CLT 612



title, this Court is of the view that such right was not required to be formalized by way of a registered instrument.

Question No.(iii)

In view of the finding that the ancestor of the plaintiffs was an occupancy tenant and his right over the land/tank including fishery right granted to him stood protected under the relevant laws, grant of fishery right by the SLR cannot be treated as erroneous merely for the absence of details of land particulars.

Question No.(iv)

State not having proved that the plaintiffs' ancestor was a cultivator under the Thekadar, the question becomes redundant.

Question No.(v)

This Court is of the view that the First Appellate Court did not make out a third case but analysed the provisions of the relevant statutes to determine the actual status of the plaintiff's ancestor as occupancy tenant.



Question No.(vi)

The State not having questioned the maintainability of the cross-appeal filed by the plaintiff before the First Appellate Court on the ground that a separate appeal ought to have been filed, it is precluded from doing so at this belated stage.

The substantial questions of law being answered thus, this Court finds no merit in the contentions raised by the State appellants so as to be persuaded to interfere.

20. In the result, the appeal fails and is therefore, dismissed. There shall be no order as to costs.

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Sashikanta Mishra,
Judge

Orissa High Court, Cuttack
The 27th February, 2026/ A.K. Rana, P.A.