

G. Simmanna and anr. Vs. Maddu Karianna and ors.

LegalCrystal Citation : legalcrystal.com/527875

Court : Orissa

Decided On : Jan-04-1972

Reported in : AIR1972Ori209; 38(1972)CLT261

Judge : A. Misra, J.

Acts : Orissa Tenants Relief Act, 1955 - Sections 11 and 11A

Appeal No. : First Appeal No. 29 of 1966

Appellant : G. Simmanna and anr.

Respondent : Maddu Karianna and ors.

Advocate for Def. : R.C. Misra, Adv.

Advocate for Pet/Ap. : Y.S.N. Murty, Adv.

Disposition : Appeal allowed

Judgement :

A. Misra, J.

1. Plaintiffs are the appellants.

2. They filed the suit for declaration of their title to and recovery of possession of the suit A Schedule properties or in the alternative for partition of the suit B Schedule properties of which Schedule A constitutes a part in two equal shares and allot one such share to them. In addition, they also prayed for recovery of Rs. 525/- realised from the suit A Schedule lands and kept in deposit during the proceeding under Section 145, Criminal P. C. between the parties and for awarding past and future mesne profite.

3. According to the plaintiffs, the B Schedule properties originally belonged to defendant No, 7 and his brother A. Gijanna. There was a partition between defendant No, 7 and the sons of his brother seven or eight years back in which the A Schedule properties were allotted to the former. While being in possession, defendant No. 7 sold the said properties under a registered sale deed dated 3-4-1962 in favour of the plaintiffs for Rs. 4,500/- and put them in possession. As defendant Nos. 1 to 3 created disturbance in plaintiffs possession, there was a proceeding under S, 145. Criminal P. C. which terminated in favour of the defendants, and therefore, the plaintiffs filed the present suit.

4. Defendant Nos. 2 to 5 are sons of defendant No. 1. Defendant No. 6 is the daughter of defendant No. 7 and wife of defendant No. 2. Defendant No. 7 in his written statement fully supported the plaintiff's case. Defendant Nos, 1 to 6 resisted the suit pleading inter alia that there has never been a partition of the B Schedule properties and defendant No. 7 was not in possession of the A Schedule or any other part appertaining thereto. Defendant No. 1 has been in possession of the entire B Schedule properties since the last twentyfive years as a tenant paying rajbhag to the landlords. The nephews of defendant No. 7 sold their half share in the B Schedule properties to defendant No. 1 by a registered sale deed marked Ex. A in the year 1957. Defendant No. 7 gifted his half share to defendant No. 6, his daughter at the time of her marriage to defendant No. 2. Since then, defendant No. 1 was giving the raibhag appertaining to that share to defendant No. 7 till the second marriage of defdt. No. 6 and thereafter to defendant No. 6. Thus, according to defendants, defendant No. 7 had no title or possession of the suit properties to convey any valid rights to the plaintiffs under the sale deed in the year 1962, and therefore, the plaintiffs cannot claim to have acquired any rights in the suit A Schedule properties or to any portion of the B Schedule. They also plead that in any view of the matter, the plaintiffs will not be entitled to recover possession, in view of the provisions contained in the O. T. R. Act.

5. The trial court recorded the following findings: (1) There was a partition of the B Schedule properties between defendant No. 7 and his nephews Appa Rao and Krishnamurty in which the A Schedule properties had been exclusively allotted to the share of defendant No. 7; (2) defendant No. 7 was in possession of the A Schedule properties as owner thereof till the date of the sale in favour of the plaintiffs under Ex 1 in the year 1962; (3) the plaintiffs acquired title to the suit properties by virtue of their purchase from defendant No. 7; (4) defendant No. 1's claim of tenancy in the B Schedule lands is not proved and (5) in view of Section 11-A of the O. T. R. Act. the Civil Court has no jurisdiction to decree recovery of possession or mesne profits. On the above findings, it decreed the suit in part declaring right, title and interest of the plaintiffs to the suit A Schedule properties, while rejecting the relief for recovery of possession and mesne profits.

6. The defendants have not challenged the findings or the partial decree passed against them. Thus, the decree to the extent declaring right, title and interest of the plaintiffs to the suit A Schedule has become final and conclusive. The plaintiffs in this appeal have challenged the correctness of the decision of the trial court holding that the suit, so far it related to recovery of possession and mesne profits, is not maintainable in view of the provisions contained in Section 11-A of the O. T. R. Act. At the time of hearing, learned Counsel for respondents reported no instructions.

7. The two points urged on behalf of appellants are firstly, in the absence of pleading of pendency of the O. T. R. proceeding before the Collector, the Civil Court should not have taken note of it and secondly, even if a proceeding before the O. T. R. Collector is pending, the trial court erred in holding that the suit relating to reliefs for recovery of possession and mesne profits is not maintainable. According to him, even if such a proceeding has been initiated and is pending, the trial court should have stayed further proceedings in the suit awaiting the result of the O. T. R. proceeding and then disposed of the suit.

8. The first contention, in my opinion, is not a material one. The suit was Instituted on 30-6-1964. The written statement by defendants Nos. 1 & 6 and a memo by

defendants Nos. 2 to 5 adopting the same were filed on 17-11-1964. The proceeding under the O. T. R. Act was initiated by defdtd. No. 1 before the O. T. R. Collector on 9-8-1965. As this dispute under the O. T. R. Act was raised subsequent to the filing of the written statement by the defendants, absence of pleading of pendency of the O. T. R. proceeding in the written statement is not a fatal defect nor can it be said that in the absence of such a specific pleading, the court could not have taken notice of such pendency when this fact is not disputed. Mr. Murty, learned Counsel for appellants does not deny that a proceeding under the O. T. R. Act was initiated by defendant No. 1 on 9-8-1965 before the O. T. R. Collector and the same was pending by the date of disposal of the suit. This being so, the only question is whether in view of raising of the dispute during the pendency of the suit, the jurisdiction of the Civil Court was completely ousted under Section 11-A of the O. T. R. Act. Section 11-A runs as follows:--

'11-A (1) Notwithstanding anything to the contrary in any of the other provisions of this Act, the Collector shall decide all disputes regarding the existence of the relationship of landlord and tenant arising in course of any of the proceedings under this Act.

(2) Where a dispute of the nature specified in Sub-section (1) is raised or is pending before the Collector, no proceedings relating to such dispute shall be maintainable or be continued in any Civil Court and the decision of the Collector shall, subject to the provisions of Sub-sections (4) and (5), be final'.

These provisions make it clear that under Sub-section (1) the Collector is given the exclusive jurisdiction to decide all disputes regarding the existence of relationship of landlord and tenant arising in course of any of the proceedings under the Act. The bar to the jurisdiction at the Civil Court under Sub-section (1) is, however, restricted by the enactment of Sub-section (2). The learned Additional Subordinate Judge relying on certain observations in a decision of this Court in (1965) 31 Cut LT 996 = (AIR 1966 Orissa 1) has taken the view that no sooner a petition under Section 11-A of the O. T. R. Act is presented before the O. T. R. Collector, the jurisdiction of the Civil Court shall cease in respect of that matter. Taking this view, he held that the present suit, so far as the reliefs for recovery of possession and inesne profits are concerned, is not maintainable, and accordingly, disallowed those reliefs claimed in the suit. In a subsequent decision of this Court in (1967) 33 Cut LT 177, (Bhima Padhi v. Venkateswara Swamy Varu) the effect of the provisions contained in Section 11-A of the O. T. R. Act when a dispute is raised during the pendency of a suit came up for consideration. After examining the various aspects, the legal position has been explained as follows:--

'The next question for consideration is as to what would happen to the civil suit or appeal if a dispute is raised during their pendency and the matter is brought to the notice of the court. When, a plaintiff sues a trespasser for eviction, the forum is the Civil Court. The plaint cannot be thrown out as not maintainable merely because the tenant starts a proceeding in the revenue court under the Act raising a dispute that there is relationship of landlord and tenant. Under Sub-section (2) of S. 11-A. the proceeding relating to such dispute shall not be maintainable or continued in the civil Court. The expression 'shall not be continued' in any Civil Court is clear and the Civil Court would not proceed further in the suit after it is brought to itsnotice that a dispute had been raised before the Collector asserting that there is a relationship of landlord and tenajt and not of owner and trespasser. What is the meaning to be

ascribed to the expression 'not maintainable'? It cannot be given a meaning that the suit would be dismissed or the plaint would be returned. Here also, the word 'or' would carry the meaning 'and' and the entire expression would mean that the plaint would lie over and the proceeding would be stayed from the stage when the matter was brought to the notice of the Civil Court that a dispute has been raised before the Collector. Otherwise it would lead to fantastic results. When the owner brings a suit against a trespasser, no useful purpose would be served to ask Mm to take back the plaint and file it before the revenue authorities for recovery of possession. If the trespasser is allowed to remain in possession of the land for more than twelve years, he would acquire a title by prescription. In view of this difficulty, the Civil suit or appeal would be stayed, until determination of the dispute by the Collector. If the Collector decides that there is relationship of landlord and tenant, the decision would be binding on the Civil Court and the suit would be dismissed, x x x x x x x. By Section 11-A. the jurisdiction of the Civil Court is not absolutely but conditionally ousted, the conditions being that the dispute has been raised and pending before the competent revenue authorities. This will not however preclude an owner to file a suit before the Civil Court and have it stayed to avoid the rights being barred by limitation resulting in acquisition of title by prescription by a trespasser'.

With respect I agree with the aforementioned exposition of the principles of law regarding the effect of Section 11-A of the O. T .R. Act where disputes are raised involving questions relating to determination of the relationship of landlord and tenant during the pendency of a Civil suit. In the present case, therefore, when it came to the notice of the court during the pendency of the suit that such a dispute had been raised, the court should have stayed the proceeding until determination of the dispute under the O. T. R. Act by the collector instead of disallowing that part of the plaintiff's claim as not maintainable.

9. In the result, the appeal is allowed. The judgment and decree of the trial court declaring title to the suit A Schedule lands are confirmed, but the judgment and decree, so far they relate to disallowing the reliefs for recovery of possession and mesne profits, are set aside and the suit is remanded for disposal of these issues in the light of the principles indicated above. The appellants will be entitled to costs of this appeal.