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IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.18478 of 2014

Sardar Sohan Singh @ Sohan Singh **Petitioner**
Mr. N.K. Sahu, Advocate

-Versus-

Sudhir Ranjan Toppo and others **Opposite Parties**
Mr. P.K. Mohanty, ASC
Mr. K.K. Rout, Advocate for O.P. No.1

CORAM:
JUSTICE R.K. PATTANAİK

DATE OF JUDGMENT:06.02.2024

1. Instant writ petition is filed by the petitioner challenging the impugned order dated 26th July, 2014 passed in connection with Revenue Appeal No.44 of 2010 under Annexure-12 by learned Additional District Magistrate, Sundargarh confirming the order 4th December, 2010 (Annexure-11) in RMC No.36 of 2010 of learned OSD (LR), Panposh on the grounds inter alia that the same is illegal, perverse and suffers from non-application of judicial mind, hence, liable to be quashed.

2. Briefly stated, the disputed property is in respect of Plot Nos.191/2 and 192 which was originally belonged to one Mangal Bhumija and Mansingh Bhumija, who are Schedule Tribes and as such, recorded in their names in CS RoR (Annexure-1) under rayati status. In respect of Plot No.191/1 measuring an area of Ac.0.34 decimal, one of the recorded tenants executed a sale deed on 4th April, 1955 and alienated the same in favour of late



Hazara Singh, namely, father of the petitioner and such transaction was effected before the onset of the Orissa Scheduled Areas Transfer of Immovable Property (By Scheduled Tribes) Regulation, 1956 (shortly called as 'the Regulation'). It is pleaded that after the Regulation came into force, Revenue Misc. Case No.1 of 1975 was registered against the father of the petitioner for his eviction from the land purchased by him as it belonged to a Schedule Tribe, however, the proceeding was dropped by order dated 29th May, 1975 and 30th May, 1975 (Annexure-2) with a conclusion therein that as after the purchase, he had been declared as a raiyat under the OLR Act and for the transaction having taken place prior to the commencement of the Regulation. As per the petitioner, CS Plot Nos.191 and 192 situate adjacent to each other and his late father was declared as a raiyat in respect of Plot Nos.191/2 and 191/3 and 191/4 under Khata No.36/1 in OLR Case No.11 of 1974 consisting of area Ac.0.60 decimal out of which Plot No.191/3 measures Ac.0.31 decimal and refers to the RoR issued to him at Annexure3. It is claimed that the father of the petitioner after having acquired title over Khata No.36/1 and while continuing possession over Plot Nos.191/1, 191/2, 191/3 and 191/4, sold Ac.0.24 decimal out of Plot No.191/3 to one Santosh Kumar Agrawal keeping Ac.0.07 decimal with him. While matter stood thus, as further pleaded, the father of opposite party No.1 purchased Ac.0.70 decimal out of CS Plot No.192 of area of Ac.1.30 decimal corresponding to CS Khata No.67 from the recorded owner, namely, Mangal Bhumija by way of a sale deed dated 22nd December, 1978 (Annexure-4) and after such deed was executed, since the other shareholder was not a signatory to it, a deed of relinquishment dated 3rd August, 1979 came into being confirming such sale in respect of Ac.0.70 decimal from Plot



No.192 and the petitioner refers to the said deed at Annexure-5. It is also pleaded that the late father of opposite party No.1, after having acquired interest over Ac.0.70 decimal, sold the entire land on different dates obtaining permission from the competent authority and it was between 23rd January, 1979 and 5th March, 1986 and the petitioner refers to a copy of the EC obtained from the Sub-Registrar, Panposh dated 9th September, 2010 i.e. Annexure-6 and one such transactions was in favour of the petitioner measuring an Ac.0.10 decimal by a sale deed dated 5th March, 1986 (Annexure-7) and after the aforesaid purchase, it was mutated in his favour vide Mutation Case No.437 of 1995 upon receiving the RI's report at Annexure-8 series and followed by order dated 15th December, 1995 (Annexure-9) and later to the mutation, construction of a residential building came up over Plot No.192(B) corresponding to Hal Plot No.560(P), Hal Khata No.54 lying adjacent to CS Plot No.191/3 with an area of Ac.0.07 decimal, in total, Ac.0.17 decimal. While the position was continued as such, according to the petitioner, opposite party No.1 taking advantage of a record of right wrongly prepared, filed an application before the learned OSD (LR), Panposh under Section 3-A of the Regulation claiming therein that his later father had purchased Plot No.192, Khata No.67 with an area of Ac.0.85 decimal from the recorded owner, namely, Saiman Bhumij with due permission from the competent authority, out of which, Ac.0.60 decimal was transferred leaving Ac.0.25 decimal with them under Hal Khata No.54 corresponding to Plot No.560, whereafter, his father sold Ac.0.10 decimal to the petitioner and accordingly, Hal RoR with an area Ac.0.15 decimal was recorded. The claim of the petitioner is that the purchase is in respect of Ac.0.70 decimal and not Ac.0.85 decimal, which as per the W.P.(C) No.18478 of 2014



petitioner, is not supported by any material evidence, the fact which was taken judicial notice of by learned authorities below but unfortunately, eviction was directed from the case land. The claim of the petitioner is that there has been sufficient material on record from the side of the petitioner to rebut the presumption but it was not duly taken cognizance of and hence, resulted in passing of the impugned orders under Annexures-11 and 12, which are, therefore, liable to be interfered with and set aside.

3. Referring to the counter affidavit, it is pleaded by opposite party No.1 that as per the draft khatian at Annexure-A/1 and RoR issued in the name of his later father at Annexure-B/1, it is suggestive of the fact that the purchase was in respect of Ac.0.85 decimal, possession in respect of which has all along been peaceful and without any interruption. It is pleaded that during the settlement operation, survey was conducted and a draft khatian was prepared with an area of Ac.0.85 decimal and the father of opposite party No.1 sold Ac.0.40 decimal to one Santosh Kumar Agrawal and again Ac. 0.10 decimal to him thereafter and with other two transactions besides one in favour of the petitioner, leaving the rest Ac.0.25 decimal recorded as per Annexure-C/1, considering which, it has to be held that the land in occupation of the petitioner belongs to them, hence, learned authorities below did not commit any error in directing eviction therefrom.

4. A rejoinder affidavit is on record, referring to which, the petitioner reiterated the plea that learned authorities below though reached at a conclusion that the father of opposite party No.1 had purchased Ac.0.70 decimal and sold the same to five others but committed serious wrong to direct eviction vis-à-vis the W.P.(C) No.18478 of 2014



case land merely referring to the RoR concluding that an area of Ac.0.15 decimal pertaining to Hal Plot No.560 Khata No.51 stands in the name of the recorded owner and as such, the occupation by the petitioner is liable for eviction in accordance with Section 3-A of the Regulation.

5. Heard Mr. Sahu, learned counsel for the petitioner, Mr. Rout, learned counsel for opposite party No.1 and Mr. Mohanty, learned ASC for State.

6. The purchase in respect of Ac.0.10 decimal from the father of opposite party No.1 and issuance of mutation RoR vide order dated 15th December, 1995 in Mutation Case No.437 of 1995 as at Annexure-9 is on record, a fact which is not in dispute. The alienations to the purchasers are also not in questioned except the claim of opposite party No.1 that Ac.0.60 decimal was sold and out of the remainder, Ac.0.10 decimal was alienated in favour of the petitioner. The reference is made to the draft khatian at Annexure-A/1 and a copy of RoR of 1994-95 at Annexure-B/1 by opposite party No.1 to claim that rest Ac. 0.15 decimal was still left, which is alleged to be in occupation of the petitioner.

7. As far as the proceeding in 1975 is concerned, it was dropped by learned Sub-Collector, Panposh in Revenue Misc. Case No.1 of 1975 at Annexure-4 with a finding that the impugned transaction was executed prior to the Regulation coming in force. It is at the instance of opposite party No.1 that the action has been reinitiated with a claim of unauthorized possession over Ac.0.15 decimal of land. In support of the contention, Mr. Sahu, learned counsel for the petitioner relies on a decision of the Apex Court in the case of **Syed Yakoob Vrs. K.S. Radhakrishnan and others AIR**



1964 SC 477 to contend that the impugned orders under Annexures-11 and 12 by learned authorities below suffer from perversity and unreasonableness and hence, deserves to be set aside. It is contended by Mr. Sahu, learned counsel that by virtue of record of right, neither title is created nor it stands extinguished and any such entry therein merely carries a presumption of correctness of it which is questionable and if it is proved by an additional evidence in rebuttal, a Court is not to attach any importance to such record of right and in the case at hand, it was shown and satisfactory proved that the father of opposite party No.1 had indeed purchased Ac.0.70 decimal only during his life time, hence, there was no basis to record Ac.0.15 decimal in the RoR and therefore, the order of eviction against the petitioner on the basis of a purported record of right, the correctness of which, has been sufficiently rebutted, could not have been directed and apart from the citations referred to hereinbefore, placed reliance on the case laws reported in **(1986) 62 CLT 322** and **(1995) 79 CLT 507**. To counter the same, Mr. Rout, learned counsel for opposite party No.1 cited the following decisions, such as, **Ramkrishna Panda Vrs. Arjuno Padhano and others AIR 1963 Ori 29**; **Swaraswati Mohanty and others Vrs. Tirthananda Badu 1997 (II) OLR 325**; **State of Orissa Vrs. Janardhan Tripathy and others (1999) 87 CLT 673** and finally, **Anadi Charan Sahu and others Vrs. Madan Ojha and others (1973) 39 CLT 1013** to contend that a record of right is a prima facie proof of title and has a presumptive value as to title and possession unless the same is proved to the contrary. The further contention is that every entry in the record of rights shall be the evidence of the matter referred to therein as held in **Anadi Charan Sahu (supra)** and shall be presumed to be correct unless it is proved otherwise and



considering the settled position of law, the claim of the petitioner that the father of opposite party No.1 has sold Ac.0.70 decimal is unlikely to render any assistance in view of the RoRs while opposing eviction for such unauthorized possession.

8. In **Ramkrishna Panda** (supra), the suit was for possession and injunction and the decision was rendered in connection with a transaction of sale deed and since the defendants therein and particularly, defendant No.1 did not choose to examine the scribe of the same, it was held that such evidence could not be read in their favour and as such, the onus is failed to be discharged without any rebuttal evidence in view of the presumption in favour of the correctness attached to the entries in the record of rights in favour of the plaintiff. It is settled law that the presumption lies in favour of a record of right unless it is rebutted with any evidence adduced. It is also a settled law that a record of right does not create or extinguish title but possesses a presumptive value which is what has been reiterated in **Swaraswati Mohanty** (supra). Similarly, while dealing with a case under the Orissa Tenancy Act, this Court in **Anadi Charan Sahu** (supra) held and observed that Section 117(3) of the said Act provides that every entry in the record of right shall be evidence of the matter referred to therein and shall be presumed to be correct if not proved to be incorrect by evidence.

9. The contention of Mr. Sahu, learned counsel for the petitioner is that the decision of learned authorities below cannot be sustained since the findings are unacceptable as it was reached without considering the rebuttal evidence. Admittedly, the case of opposite party No.1 hinges on Annexures-A/1, B/1 and C/1. It is also not in dispute that there has been alienation of Ac.0.70

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decimal of land by the father of opposite party No.1. The purchase claimed to be in respect of Ac.0.85 decimal. As far as the transactions are concerned, it is suggested that Ac.0.70 decimal of land was purchased by opposite party No.1 and the same is evident from Annexures-4, 5 and 6. Such alienation of Ac.0.10 decimal in favour of the petitioner in the year 1986 is also revealed from Annexure-7 followed by issuance of mutation RoR later to the order under Annexure-9 in Mutation Case No.437 of 1995. Such fact of purchase of Ac.0.70 decimal is also accepted by learned authorities below upon a bare reading of Annexures-11 and 12. Merely, considering the record of right in favour of opposite party No.1, as is suggested, learned authorities below held the possession of the case land by the petitioner to be unauthorized. As to how and wherefrom an area of Ac.0.15 decimal was left to be occupied by the father of opposite party No.1 is not clearly made to reveal. It is a fact that a draft khatian (Annexure-A/1) was prepared and published and it was followed by the RoR in 1994-94 as per Annexure-B/1 and thereafter, the RoR i.e. Annexure-C/1 but the Court is of the considered view that before any such eviction is thought of, one has to be fully convinced regarding the extent of land purchased by the father of opposite party No.1 which is made to suggest with an area of Ac.0.70 decimal. The sale deed, a copy of which at Annexure-4, rather, reveals alienation of Ac.0.70 decimal. It is not clear as to how the late father of opposite party No.1 claimed to possess extra Ac.0.15 decimal after a sale of Ac.0.10 decimal in favour of the petitioner is indeed a disputed question of fact, as according to the Court, needs enquiry and determination. For claiming so and demanding recovery of the land by an eviction, it has to be demonstrated with clear evidence.



10. The Court is alive to the legal position discussed hereinabove which is to the effect that a record of right has a presumptive value of title and possession but rebuttal in nature. In the present case, the petitioner opposed eviction and adduced evidence through Annexure-4 to deny the claim of opposite party No.1. At least, it can be said that a doubt was created with regard to the extent of land claimed to have been purchased by late father of opposite party No.1 showing that the same was in respect of Ac.0.70 decimal only disposed of entirely in favour of others including the petitioner corresponding to Ac.0.10 decimal. In an eviction proceeding, without appreciating such a factual position, taking a decision to eject the petitioner from the case land simply relying the RoRs cannot be said to be the correct approach. When the claim of opposite party No.1 is challenged and it received a dent clearly showing purchase of land Ac.0.70 decimal, a fact which has been openly recognized by learned authorities below, eviction could not have been directed straightaway barely referring to the RoRs with a conclusion that a presumption is attached to the same. Any Court or authority may act upon a record of right as it possesses a presumptive value and cannot overlook it easily but shall have to take notice of the reply and rebuttal evidence. In the case at hand, the dispute centres around the extent of land purchased by the father of opposite party No.1 and denied by the petitioner, a finding of fact and decision to rest upon Annexure-4 in rebuttal. The Court is of the humble view that learned authorities below ought to have desisted themselves from directing eviction, morefully when, both have found the transactions to be in respect of Ac.0.70 decimals. With such a conclusion, the Court is of the further view that opposite party No.1 has the liberty seeking appropriate relief according to law, if



any such possession is in respect of a land measuring Ac.0.15 decimal being a part of the purchase of Ac.0.85 decimal on the field though not on paper but with such evidence received from both sides, it was not justified on the part of learned authorities below to order eviction in respect of the case land in occupation of the petitioner. With the discussions as aforesaid and keeping in view the settled position of law, the irresistible conclusion of the Court is that the impugned decisions cannot be sustained in law.

11. Hence, it is ordered.

12. In the result, the writ petition stands allowed. As a necessary corollary, the impugned orders under Annexures-11 and 12 in RMC No.36 of 2010 and Revenue Appeal Case No.44 of 2010 by the learned authorities below are hereby set aside.

13. In circumstances, however, there is no order as to costs.

(R.K. Pattanaik)
Judge

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