1961

September 20.

MAGITI SASAMAL

v.

PANDAB BISSOI

(B. P. SINHA, C. J., P. B. GAJENDRAGADKAR and RAGHUBAR DAYAL, JJ.)

Landlord and Tenant—Relationship in dispute—Civil Court —Jurisdiction of—Orissa Tenants Protection Act, 1948 (Act III of 1948), s. 7(1).

The appellant filed in the Civil Court a suit for permanent injunction restraining the respondents from entering the lands in suit on the allegation that the lands belonged to him and were in his cultivatory possession for many years and that the respondents had no right or title to them and had never cultivated them. The respondents contended that they were tenants of portions of the said lands and were in cultivating possession of the same as tenants. The question which arose for decision was whether having regard to the provisions of s. 7(1) of the Orissa Tenants Protection Act, 1948, the Civil Court had jurisdiction to entertain the suit which involved a dispute as to the relationship of landlord and tenant between the parties.

Held, that even on a liberal construction of s. 7(1) of the Act it cannot be held that disputes as regards the existence of the relationship of landlord and tenant fall to be determined by the Collector under that section. Disputes which are entrusted to the Collector under s. 7(1) are the simple disputes specified therein in the five categories and do not include a serious dispute as to the relationship between the parties as landlord and tenant. In the present case the suit was therefore within the jurisdiction of the Civil Court.

Secretary of State v. *Mask & Co.* (1940) L.R. 67 I.A. 222, referred to.

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 92 of 59.

Appeal from the judgment and order dated August 31, 1956, of the Orissa High Court in second appeal No. 151 of 1951.

A. V. Viswanatha Sastri and *T. V. R. Tatachari*, for the appellant.

M. S. K. Sastri, for respondents.

1961

Magiti Sasamal
v.
Pandab Bissoi

Gajendragadkar J.

1961. September 20. The Judgment of the Court was delivered by

GAJENDRAGADKAR, J.—This is an appeal by a certificate granted by the High Court of Orissa and it raises a short question about the scope and effect of the provisions of s. 7 (1) of the Orissa Tenants Protection Act, 1948 (Act III of 1948) (hereafter called the Act). The appellant Magiti Sasamal sued the respondents Pandab Bissoi and others in the Court of the District Munsiff, Berhampur, for a permanent injunction restraining them from entering the suit lands belonging to the appellant. The appellant's case was that the suit lands belonged to him and were in his personal cultivation for many years. In the year of the suit the appellant had cultivated the said lands as usual, manured and raised paddy crop thereon after spending a large amount in that behalf. According to the appellant the respondents had no manner of right or title to the said lands and had never cultivated them. From the notice given by them to the appellant, however, it appeared that the respondents wanted to enter upon the lands forcibly and to remove the standing crop therefrom. This they desired to do by setting up a false claim that they were the tenants of the lands and as such were entitled to the protection of the Act. The appellant alleged that the respondents were local rowdies and were known for their high-handed action in the neighbourhood. On these allegations the appellant claimed a permanent injunction against the respondents.

The respondents admitted the title of the appellant to the lands in suit but pleaded that they were the tenants in respect of separate portions of the said lands. Their version was that they had cultivated their holdings and raised the paddy crop thereon in the year in question. According to them they had been in cultivating possession of their respective holdings as tenants long before September 1, 1947, and so they were entitled to remain in possession as such tenants under the Act. It was also alleged by the respondents that

they had filed petitions under the Act before the Sub-Collector, Berhampur, claiming appropriate relief against the appellant. They urged that they were ever ready and willing to pay the Rajabhag as provided by the Act and they contended that the suit was not maintainable in a civil court.

On these pleadings the learned trial judge framed appropriate issues. Three issues of law had been framed by him on the pleas raised by the respondents. These issues were, however, not pressed at the hearing, One of them, namely issue 5, refers to the jurisdiction of the Court to try the suit in view of the provisions of the Act. Thus, it is clear that the issue of jurisdiction was not pressed by the respondents at the trial. On the merits the learned trial judge considered the evidence and held that though the appellant was the owner of the property the respondents had proved that they were the tenants in possession of their respective holdings and that their possession was long before September 1, 1947. On these findings the learned judge came to the conclusion that the appellant was not entitled to claim an injunction against the respondents and so he dismissed his suit.

The matter was then taken by the appellant before the District Judge, Ganjam, Nayagarh. The learned District Judge considered the evidence led by the parties and reversed the conclusions of the trial court. He held that the onus was on the respondents to prove their possession of their respective holdings as tenants on or before the specified date, and according to him they had failed to discharge that onus. The question of jurisdiction was not raised before the appellate court by the respondents. Having held against the respondents on the merits the learned District Judge allowed the appeal, set aside the decree passed by the trial court and directed that an injunction should be issued against the respondents as claimed by the appellant.

1961

Magiti Sasamal v. Pandab Bissoi

Gajendragadkar J.

The respondents then moved the High Court by second appeal; and the main point which they urged before the High Court was that the learned trial judge had no jurisdiction to entertain the suit having regard to the provisions of s. 7 (1) of the Act. The appellant pointed out to the High Court that this question of jurisdiction had not been pressed before the trial court and had not been raised before the lower appellate court. Even so the High Court allowed the point to be raised and decided it in favour of the respondents. As a result of the finding that the civil court had no jurisdiction to entertain the suit the second appeal preferred by the respondents has been allowed and the appellant's suit dismissed with costs throughout. It is against this decree that the appellant has come to this Court with the certificate granted by the High Court; and the short point which has been raised before us on his behalf by Mr. Viswanatha Sastri is that in holding that the present suit is outside the jurisdiction of the civil court the High Court has misconstrued the scope and effect of the Provisions of s. 7(1) of the Act.

The Act received the assent of the Governor-General on February 5, 1948 and was published on February 14, 1948. It is a temporary Act and by s.1(4) it has been provided that it shall cease to have effect on April 15, 1949 except as respects things done or omitted to be done before the expiration thereof. It has been passed in order to provide for temporary protection to certain classes of tenants in the Province of Orissa. Legislature thought that the said tenants deserved protection and so as a beneficent measure the Act has been passed. Section 2(c) of the Act defines landlord and s. 2(g) defines a tenant. The main operative provision of the Act is contained in s. 3. This Section provides that notwithstanding anything contained in any other law for the time being in force, or any express or implied agreement to the contrary, but subject to the provisions of this Act,

a person who, on the first day of September 1947, was cultivating any land as a tenant shall continue to have the right to cultivate such land and it shall not be lawful for the landlord to evict the tenant from the land or interfere in any way with the cultivation of such land by the tenant. It would thus be seen that the Act purports to provide protection to tenants who were in possession of lands on the appointed day which is September 1, 1947. The other subsections of s. 3 make material and subsidiary provisions in regard to the said protection. Section 7(1) reads thus: "Any dispute between the tenant and the landlord as regards, (a) tenant's possession of the land on the 1st day of September, 1947 and his right to the benefits under this Act. or (b) misuse of the land by the tenant, or (c) failure of the tenant to cultivate the land properly, or (d) failure of the tenant to deliver to the landlord the rent accrued due within two months from the date on which it becomes payable, or (e) the quantity of the produce payble to the landlord as rent, shall be decided by the Collector on the application of either of the parties".

The appellant contends that s. 7(1) covers disputes between landlords and tenants which are specified under cls. (a) to (e) but it does not cover a dispute between the parties as to whether the relationship of landlord and tenant exists between them. It is only where such a relationship is either admitted or established in a civil court that the specified disputes fall within the exclusive jurisdiction of the Collector on the other hand the respondents' case is that the dispute as to the status of the tenant is also included under s. 7(1). The High Court has upheld the respondents' interpretation, and Mr. Viswanatha Sastri contends that this interpretation is based on a misconstruction of the section.

It is true that having regard to the beneficent object which the Legislature had in view in passing the Act its material provisions should be liberally

1961

Magiti Sasamal v. Pandab Bissoi

Gajendragadkar J.

construed. The Legislature intends that the disputes contemplated by the said material provisions should be tried not by ordinary civil courts but by tribunals specially designated by it, and so in dealing with the scope and effect of the jurisdiction of such tribunals the relevant words used in the section should receive not a narrow but a liberal construction.

While bearing this principle in mind we must have regard to another important principle of construction, and that is that if a statute purports to exclude the ordinary jurisdiction of civil courts it must do so either by express terms or by the use of such terms as would necessarily lead to the inference of such exclusion. As the Privy Council has observed in *Secretary of State* v. *Mask & Co.*, (1) "it is settled law that the exclusion of the jurisdiction of the civil courts is not to be readily inferred, but that such exclusion must either be explicitly expressed or clearly implied". There can be no doubt that ordinarily a dispute in regard to the relationship between the parties such as that between a landlord and a tenant would be a dispute of a civil nature and would fall within the competence of the civil court. If the respondents contend that the jurisdiction of the civil court to deal with such a civil dispute has been taken away by s. 7 (1) we must enquire whether s. 7(1) expressly takes away the said jurisdiction or whether the material words used in the section lead to such an inference or the scheme of the Act inescapably establishes such an inference. The relevance and materiality of both these principles are not in dispute.

Let us then revert to s. 7. It would be noticed that s. 7(1) has expressly and specifically provided for five categories of disputes which are within the jurisdiction of the Collector and which must therefore be taken to be excluded from the jurisdiction of the civil court. On a reasonable construction of s. 7(1) a dispute specified by s. 7(1)(a) would be a dispute between a tenant and a landlord in regard

(1) (1940) L. R. 67 I. A. 222, 236.

to the former's possession of the land on September 1, 1947. It is clear that the dispute to which s. 7(1)(a) refers is a narrow dispute as to the possession of the tenant on a specific date and his consequential right to the benefits of the Act. The same is the position with regard to the other categories of the dispute specified by s. 7(1). In none of the said categories is a dispute contemplated as to the relationship of the parties itself. In other words s. 7(1) postulates the relationship of tenant and landlord between the parties and proceeds to provide for the exclusive jurisdiction of the Collector to try the five categories of disputes that may arise between the landlord and the tenant. The disputes which are the subject-matter of s. 7(1) must be in regard to the five categories. That is the plain and obvious construction of the words "any dispute as regards". On this construction it would be unreasonable to hold that a dispute about the status of the tenant also falls within the purview of the said section. The scheme of s. 7(1) is unambiguous and clear. It refers to the tenant and landlord as such and it contemplates disputes of the specified character arising between them. Therefore, in our opinion, even on a liberal construction of s. 7(1) it would be difficult to uphold the argument that a dispute as regards the existence of the relationship of landlord and tenant falls to be determined by the Collector under s. 7(1).

In this connection it would be relevant to take into consideration the provisions of s. 7(2). This clause provides that the Collector may, after making such enquiries as he may deem necessary, order the tenant, by a notice served in the prescribed manner and specifying the grounds on which the order is made, to cease to cultivate the land. It is significant that the making of the enquiry and its mode are left to the discretion of the Collector. If a serious dispute as to the existence of the relationship of landlord and tenant between the parties had been covered by s. 7(1) it is difficult to imagine that the

1961

Magiti Sasanal v. Pandab Biasoi

Gajendragadkar J.

Legislature would have left the decision of such an important issue to the Collector giving him full freedom to make such enquiries as he may deem necessary. As is well known, a dispute as to the existence of the relationship of landlord and tenant raises serious questions of fact for decision, and if such a serious dispute was intended to be tried by the Collector the Legislature would have provided for an appropriate enquiry in that behalf and would have made the provisions of the Code of Civil Procedure applicable to such an enquiry. Section 7(2) can be easily explained on the basis that the relationship between the parties is outside s. 7(1) and so the disputes that are covered by s. 7(1) are not of such a nature as would justify a formal enquiry in that behalf. The provisions of sub-ss. (3), (6) and (7) also indicate that the relationship between the parties is not, and cannot be, disputed before the Collector. The parties arrayed before him are landlord and tenant or vice versa, and it is on the basis of such relationship between them that he proceeds to deal with the disputes entrusted to him by s. 7(1).

It is true that when the relationship of landlord and tenant is proved or admitted the disputes falling within the five categories enumerated in s. 7(1) will have to be tried by the Collector. Let us take the present case itself to illustrate how s. 7(1) will operate. In the suit filed by the appellant against the respondents the issue about the status of the respondents was framed and so it had to be tried by the civil court. In such a suit if the civil court holds that the relationship between the landlord and the tenant had not been established it may proceed to deal with the suit on the merits. If, however, it holds that the said relationship is established then the civil court cannot deal with the dispute between the parties if it falls within any one of the categories specified by s. 7(1). In such a case, having made the finding about the relationship between the parties the civil court will either dismiss the suit on the ground that it can give no relief to

the landlord, or may, if it is permissible to do so, return the plaint for presentation to the Collector. What course should be adopted in such a case it is unnecessary for us to decide in the present appeal. All that we wish to emphasise is that the initial dispute between the parties about the relationship subsisting between them will still continue to be tried by the civil court and is outside the purview of s. 7(1).

In support of the argument that a dispute as to the existence of relationship as landlord and tenant should be taken to be included under s. 7(1) reliance is placed on the provisions of s. 8(1) of the Act. Section 8(1) provides that subject to the provisions of s. 7 all disputes arising between landlord and tenant shall be cognisable by the revenue court and shall not be cognisable by the civil court. It must be pointed out that we are really not concerned with s. 8(1) in the present appeal because even according to the respondents the present dispute between the parties attracted s. 7(1) and should have been tried by the Collector and not by the civil court. However, the question about the construction of s. 8(1) has been incidentally raised before us. In appreciating the scope and effect of s. 8(1) it is necessary to bear in mind the provisions of s. 13 of the Act. The said section provides that the Act shall, as far as may be, be read and construed as forming part of the Madras Estates Land Act, 1908, or as the case may be, of the Orissa Tenancy Act, 1913. Therefore, reading the provisions of s. 8(1) and s. 13 together it follows that all that s. 8 (1) provides is that except for the disputes covered by s. 7 (1) all disputes arising between landlord and tenant shall be cognisable by the revenue court and to the trial of such disputes by the revenue court the relevant provisions of the Orissa Tenancy Act, 1913 would apply. It is true that disputes to which s. 8(1) applies are entrusted to the exclusive jurisdiction of the revenue courts and are excluded from the jurisdiction of civil courts, but the effect of this provision will have to be considered in the light of

1961

Magili Sasamal v. Pandab Bisoi

Gajendragadkar J.

the other relevant provisions of the parent Act of which this temporary Act forms a part. Now, if we turn to some of the relevant provisions of the parent Act it would be clear that when the revenue courts are given jurisdiction to try the disputes the enquiry held by them purports to be a formal enquiry to which the provisions of the Code of Civil Procedure may apply (Vide: s. 192 of the Orissa Tenancy Act, 1913). Similarly, the provisions of s. 204(1) which provides for appeals contemplate appeals to the District Court and the High Court where questions of title are involved. These provisions illustrate the point that where serious disputes about title are entrusted to special tribunals usually the Legislature contemplates a formal enquiry and makes the provisions of the Code of Civil Procedure applicable to such an enquiry and provides for appropriate appeals. Now, in regard to the order passed by the Collector under s. 7(1) the only provision about appeals is that made by s. 11 which provides that an appeal shall lie to the prescribed superior revenue authority whose decision shall be final, and shall not be subject to any further appeal or revision. Departure made by the Legislature in providing only one appeal and that too in every case to the prescribed superior revenue authority clearly brings out that the disputes which are entrusted to the Collector under s. 7(1) are the simple disputes specified in the five categories and do not include a serious dispute like that of the relationship between the parties as landlord and tenant. If such a dispute had been intended to be tried by the Collector the Legislature would have provided for a formal enquiry and would have prescribed appropriate appeals on the lines of ss. 192 and 204 of the parent Act.

In this connection we may in passing refer to the provisions of s. 126 of the parent Act. This section deals with the jurisdiction of civil courts in matters relating to rent. Section 126(3) provides for the institution of suits in civil courts on the

grounds specified by cls. (a) to (g). Clause (c) deals with the ground that the relationship of landlord and tenant does not exist. This clause shows that if a dispute arose between the parties as to the existence of the relationship of landlord and tenant a suit in a civil court as contemplated is prescribed by s. 126(3) (c). That also has some bearing on the construction of s. 7(1); and it is for that limited purpose that we have referred to it. Therefore, we are satisfied that the High Court was in error in holding that under s. 7(1) of the Act it was competent to the Collector to try the issue between the appellant and the respondents whether or not the respondents were the tenants of the appellant and that the civil court had no jurisdiction to entertain the said dispute.

In the result, the appeal must be allowed, the order passed by the High Court set aside and that of the District Court restored with costs throughout.

Appeal allowed.