



IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C). No.19961 of 2017
ODHC010154782017

(An application under Articles 226 and 227 of Constitution of India)

Rajendra Kumar Routray & Ors. Petitioners

-Versus-

State of Odisha & others Opposite Parties

Advocates appeared in the case through hybrid mode:

For Petitioners : Mr. S.Mishra, Advocate

For Opp. Parties: Mr. S.N.Pattnaik,
Addl. Government Advocate,
Mr. P.K.Khuntia, Advocate
(For Private Opp. Party No. 3 and 4)

CORAM:

JUSTICE SASHIKANTA MISHRA

JUDGMENT
21st August, 2026

SASHIKANTA MISHRA, J.

In the present writ application, the petitioners assail the order dated 27.01.2017 passed by the Commissioner, Consolidation and Settlement, Bhubaneswar



in R.C. Case No. 68 of 2014, whereby directions were issued for deletion of the names of the present petitioners and recording of the names of Opposite Party Nos. 3 and 4 in the ROR pertaining to the suit land.

2. The facts of the case, relevant only to decide the present case are that the suit land was originally recorded in the name of Sulakhyana Routray, grand-mother of the petitioners and one Kapileswar Chhottray. After death of Sulakhyana, her son, namely, Baidyanath Routray, father of the petitioners and Kapileswar Chhottray were recorded as joint owners in the consolidation ROR published in the year 2003. After death of Baidyanath, the petitioners being legal heirs applied for mutation of their names before the Tahasildar, Khurda, registered as Mutation Case No. 8423 of 2015. The Tahasildar allowed the application and accordingly, revised ROR was issued. At this stage, the private Opposite Party Nos. 3 and 4 filed a revision under Section 37(1) of the Orissa Consolidation of Holdings and Prevention of Fragmentation of Land Act, 1972 (hereinafter



referred to as the “OCH and PFL Act”) before the Commissioner, Consolidation and Settlement, Bhubaneswar, registered as R.C. Case No. 68 of 2014 for correction of the ROR in respect of the suit land by inserting their names in place of the petitioners. It was claimed by them that the land was recorded in the names of Ramachandra Chhottray, father of Kapileswar Chhottray and Sulakhyana Dei in the Sabik records. After death of Ramachandra, his son Kapileswar gifted his share to one Bichitrananda Pattnaik vide a registered deed dated 11.01.1984 and as such, Sulakhyana and Bichitrananda became the joint owners. After death of Sulakhyana, land was recorded in the name of his legal heir namely, Baidyanath Routray. Said Baidyanath Routray and Bichitrananda Pattnaik partitioned the family properties vide registered partition deed dated 27.11.1979, whereby the suit land measuring Ac. 1.817 decimals fell to the share of the Bichitrananda Pattnaik, father of Opp.Party No.3 and husband of the Opp.Party No.4 respectively. So, when the consolidation ROR was prepared in the names of the



Kapileswar Chhotray and Baidyanath Routray, ignoring the gift deed and partition deed, they filed revision. It is the further case of the petitioner that during pendency of the revision, the private Opposite Party also instituted a suit before the learned Civil Judge, Sr. Division, Khurda for declaration of right, title, interest and possession and for declaration that the mutation ROR issued by the consolidation authorities in favour of the petitioners is illegal. The suit was registered as C.S. No. 91 of 2015. The petitioners sought rejection of the plaint by filing application under Order VII Rule 11 of CPC but the same was rejected and confirmed in revision by the District Court as well as by this Court. The petitioners contend that they being the legal heirs of Baidyanath Routray, have acquired 50 per cent share of the suit land measuring Ac. 0.930 decimals which was mutated and recorded in their names in the mutation proceeding. The revision petition was scheduled to be heard on a date subsequent to submission of written arguments by the petitioners but no further date was fixed and the final



order was passed on 27.01.2017. The revision was allowed illegally accepting the gift deed and partition deed as valid and without assigning reasons.

On such facts, the petitioners have filed this writ petition with the following prayer:

“It is therefore prayed that your Lordships may graciously be pleased to admit the writ petition, call for the records, issue Rule NISI in the form of writ of Certiorari, asking the opposite parties to show cause as to why the Order dated 27.1.2017 passed by the learned Commissioner, Consolidation and Settlement, Khurda in R.C. No. 68 of 2014 vide Annexure-6 shall not be set aside/quashed.

And in the event, the opposite parties fail to show cause or show insufficient cause, the said rule be made absolute and the Order dated 27.1.2017 passed by the learned Commissioner, Consolidation and Settlement, Khurda in R.C. No. 68 of 2014 vide Annexure-6 be set aside/quashed.;

And may pass any other Writ(s), Order(s), direction(s), relief(s) as deem fit and proper;

And for this act of kindness, the petitioner shall as in duty bound ever pray.”

3. Counter affidavit has been filed by the Opposite Party No.3 inter alia stating that the writ application has become infructuous in view of the disposal of the suit, whereby title over the suit property has been declared in favour of the Opposite Party Nos. 3 and 4. It is further stated



that the revisional Court granted full opportunity of hearing to all parties and the order contains adequate reasons.

4. Rejoinder has been filed by the petitioners, mainly questioning the decree passed by the Civil Court during the pendency of the revision under Section 37 of OCH and PFL Act on the principles of res judicata. Since the decree of the civil Court is based on the order of the revisional authority, which is under challenge before this Court, the outcome of the civil suit cannot stand in the way. In any case, the decree being an ex parte one, an application under Order IX Rule 13 has been filed to set aside the same, which is pending for final hearing.

5. Heard Mr. S. Mishra, learned counsel for the petitioners and Mr. S.N. Pattnaik, learned Additional Government Advocate for the State and Mr. P.K. Khuntia, learned counsel for the private Opposite Party Nos. 3 and 4.

6. Mr. Mishra submits that the impugned order was passed without notice to the petitioners as no date was fixed after submission of the written arguments by them. He



further submits that perusal of the impugned order would show that the revisional authority has merely recorded the rival contentions and stated his agreement to the contentions of the private Opposite Parties without ascribing specific reasons. On merits, Mr. Mishra would submit that the civil Court decree cannot be treated as the final word in the matter as the same is based entirely on the findings of the revisional authority.

7. Mr. S.N.Pattnaik, learned AGA would submit that this being essentially a private dispute, the State has no role to play. He however, submits that from the impugned order itself and as admitted by the petitioners, it is clear that the revisional authority has taken note of the rival contentions and the arguments advanced by the parties while deciding the revision.

8. Mr. P.K.Khuntia, learned counsel for the private Opposite Party would argue that the maintainability of the civil suit during pendency of the revision under Section 37 is no longer required to be gone into in view of the judgment of



this Court passed on 26.07.2017 in CMP No. 389 of 2023, wherein it was held that the civil Court has jurisdiction to entertain the suit inspite of the bar contained in Section 51 of the OCH and PFL Act. Mr. Khuntia further argues that the consolidation authority as well as the mutation authority had not taken into consideration the gift deed and partition deed, thereby ignoring vital piece of evidence. For such reason, the revision was filed and rightly allowed. In any case, the civil Court decreed the suit by declaring the title of the private Opposite Parties and therefore, nothing further remains to be decided in the present case.

9. Coming to the first point raised by the petitioner, it is seen that there is clear mention therein of the Opposite Parties (petitioners herein) having submitted written note of submissions. The contentions raised have been mentioned in detail. So, it is not a case where the authority did not consider the contentions raised by the petitioners. Under such circumstances, assuming that no notice regarding fixation of further date of hearing was served on them, it



would have had no bearing on the final outcome of the case. This argument is therefore, hit by the doctrine of empty formality. Even otherwise, the petitioners have not been able to demonstrate that they had no notice of hearing of the case or that the impugned order was antedated.

10. As regards non-assigning of reasons, it is argued that the revisional authority has simply agreed with the views made in the revision petition but not applied its judicial mind independently. Perusal of the impugned order reveals that the revisional authority has extensively referred to the contentions raised by the parties and if the order is read as a whole, it would reveal that he decided in favour of the petitioners referring to the gift deed and the partition deed. The following observations of the revisional authority are noteworthy:

“While considering argument placed by the petitioner on basis of Regd. Gift Deed and partition Deed the suit land be recorded in favour of the petitioner and the O.Ps argument without any basis. Hence, I do agree with the views of the petitioner and dis-agrees the views of the Opp.Parties. hence, this revision case is to be decided as per law.”

It cannot be said that the impugned order is sans any reason.



11. The other argument raised by the petitioners that the civil Court decree being based on the order of the revisional authority is inconsequential, can be considered only to be rejected. The judgment and decree of the civil Court has been enclosed to the counter affidavit filed by the private Opposite Parties. Reading of the judgment reveals that the civil Court framed specific points for determination (in the absence of contest by the defendants-present petitioners) and thereafter analysing the oral and documentary evidence adduced by the parties, deemed it proper to decree the suit. In doing so, the civil Court has also taken note of the order passed by the revisional authority. Thus, by no stretch of imagination it can be said that the suit was decreed only on the basis of the order of the revisional authority. It is true that an application to set aside the ex parte decree has been filed and fixed for final hearing. This Court would not like to pass any comment as it is for the civil Court to decide the application. But as of now, it must be held that the civil Court decree subsists.



12. In the above circumstances, this Court finds none of the arguments raised by the petitioners to be valid so as to be persuaded to interfere in the matter.

13. For the foregoing reasons therefore, the writ application is found to be devoid of merit and is therefore, dismissed. There shall be no order as to costs.

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Sashikanta Mishra,
Judge

Orissa High Court, Cuttack
21st August 2026/ Deepak

Signature Not Verified

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