

IN THE HIGH COURT OF ORISSA AT CUTTACK

S.A. No.39 of 1991

In the matter of appeal under Section 100 of the Code of Civil Procedure assailing the judgment and decree dated 16.09.1990 and 11.10.1990 respectively passed by the learned District Judge, Mayurbhanj in Title Appeal No.14 of 1997-I confirming the judgment and decree dated 28.08.1987 and 07.03.1987 respectively passed by the learned Subordinate Judge, Karanjia in T.S. No.15/86-I.

State of Orissa, represented by the Collector, Mayurbhanj & Others *Appellants*

-versus-

Superintendent of Post Office, Mayurbhanj Division & Others *Respondent*

**Appeared in this case by Hybrid Arrangement
(Virtual/Physical Mode):**

For Appellants - Miss.Samapika Mishra,
Additional Standing Counsel

For Respondents - Mr.A.K.Mohanty,
Central Government Counsel

CORAM:
MR. JUSTICE D.DASH

Date of Hearing : 25.07.2022 : Date of Judgment:01.08.2022

D.Dash,J. The Appellants, by filing this Appeal under Section-100 of the Code of Civil Procedure, 1908 (for short, 'the Code'), have assailed the judgment and decree dated 16.09.1990 and 11.10.1990 respectively passed by the learned District Judge, Mayurbhanj in Title Appeal No.14 of 1997-I.

By the same, the Appeal filed by the present Appellants being the aggrieved Defendants under section 96 of the Code has been dismissed and thereby the judgment and decree dated 28.08.1987 and 07.03.1987 respectively passed by the learned Subordinate Judge, Karanjia in T.S. No.15/86-I have been confirmed.

The Secretary, Ministry of Communication, Government of India, New Delhi, the Post Master General, Orissa, Bhubaneswar and the Superintendent of Post Offices, Mayurbhanj, as the Plaintiffs, have filed the suit seeking declaration of right, title and interest of the Central Government over the suit land and recovery of possession of said land with house standing thereon from the present Appellants (Defendants).

2. For the sake of convenience, in order to avoid confusion and bring in clarity, the parties hereinafter have been referred to, as they have been arraigned in the Trial Court.

3. The Plaintiffs' case is that in the year 1910, a Branch Post Office was opened at Karanjia in the District of Mayurbhanj and at that time, the then Sovereign Ruler of the Ex-State of Mayurbhanj had allotted the land measuring Ac.0.13 decimals covered under Plot no.1100 appertaining to Khata No.220/1 for the purpose. The Post Office was constructed on that land and it stood recorded in name of Raj Sarkar in the record of right of 1930-31 settlement. On 07.05.1952, the Branch Post Office was upgraded to Sub-Post Office. On account of increase in the activities coming to pour in course of time, the Post Office was shifted to a rented house on 27.09.1967 and the old Post Office was lying vacant till 1974. It was then in a dilapidated condition. The Defendant No.5, being the Junior Engineer of the Roads and Building Division of Public Works Department of Government Orissa of Karanjia

Section, forcibly occupied the suit house without the knowledge and consent of the Plaintiffs sometime in the year 1974 and as such, continued to be in unauthorized possession. Despite several correspondence, the Defendants, having not responded in vacating the said house, the suit has come to be filed.

4. The Defendants, in their written statement, have pleaded that the suit land was never allotted to the Central Government and it was not known to the Defendants as to when the Branch Post Office was established at Karanjia. It is stated that suit house was never constructed for the purpose of Post Office. It belonged to the State Government and employees attached to the Road and Building Division of Public Works Department of Karanjia Section are in lawful possession of the same.

5. On the above rival pleadings, the Trial Court, in total, framed seven issues. Answering the crucial issues, i.e., issue nos.5 and 6 with regard to the allotment of the suit land to the Central Government and the ownership of the Central Government as claimed over the suit land and their entitlement to possess, upon examination of the evidence of both oral and documentary on record and construction Rule-450 of the Posts and Telegraphs Manual, the Trial Court has held the claims of the Plaintiffs as tenable. This has practically led the Trial Court to decree the suit granting the reliefs as prayed for by the Plaintiffs.

6. The Defendants, being aggrieved by the decision of the Trial Court, having carried the First Appeal, have been unsuccessful.

7. The Appeal has been admitted on 09.05.1991 to answer the substantial questions of law as indicated in ground no.3 and 4 of the Memorandum of Appeal, which are regard to interpretation of Rule 450

of the Posts and Telegraphs Manual and applicability of the same to the facts and circumstances of the case. To be more specific, the question is that Rule 450 of the Posts and Telegraphs Manual when provides that ownership of all Government buildings occupied by the India Posts and Telegraphs Department on 1.04.1921 vest in the Government even though the building may have been constructed or acquired out of State Revenue; whether in absence of any evidence that the Postal Department was in possession of the suit land together with the building standing thereon on 01.04.1921, said rule would come to the aid of plaintiffs. The other substantial question of law framed for being answered by that order dated 09.05.1991 is that whether the Trial Court had the jurisdiction to entertain the suit in view of the provisions contained in Article 131 of the Constitution of India.

8. Learned Counsel for the Appellants submitted that the Courts below have erroneously construed the provision of Rule 450 of the Posts and Telegraphs Manual and have applied the same erroneously to the facts and circumstances of the case in not properly appreciating the evidence on record. She further submitted that the suit filed by the Plaintiffs, being not in compliance with the provision of Article 131 of the Constitution of India, the same ought to have been dismissed.

9. Learned counsel for the Respondents submitted that maintainability of the suit for the reliefs claimed in view of the provision of Article 131 of the Constitution of India, having not been raised before both the Courts below either in the pleading or even so contending; now it is too late in the day to raise that as an objection and project it for the purpose of non-suiting the Plaintiffs in saying that the suit is not maintainable. He submitted that the Courts below have properly

construed the provisions of Section 450 of the Posts and Telegraph Manual and on the basis of the evidence available on record, have rightly decreed the suit, which is not liable to be interfered with.

10. Keeping in view the submissions made, I have carefully read the judgments passed by the Courts below, which have been impugned in this Appeal.

The Defendants, at no place in the written statement have raised the question of maintainability of the suit citing the provisions of Article 131 of the Constitution of India. Nothing has been pleaded that the Plaintiffs, as shown, are incompetent or having no authority to institute the suit in seeking the reliefs. Even before the First Appellate Court, such a contention is found to have not been raised. Therefore, no issue to that effect has been framed for being answered either by the Trial Court nor any such point had been formulated by the First Appellant Court to answer. In that state of affair, in my view, for the first time in the Second Appeal, it is not permissible for the Defendants to raise that issue of maintainability of the suit for the reliefs claimed for being taken cognizance of.

11. The Plaintiffs have led evidence through P.W.1 that the then Ruler gave the land for the Post Office to run and it was so running in a tiled roofed house over there and that on 07.09.1982, the Branch Post Office was upgraded to Sub-Post Office and it started to function there till 1967 when for space constraint, it was shifted to a rented house. But the fact remains that no such ancient document as to the allotment of the land by the then Rule way back in the year 1910 has either been filed or proved.

Rule 450 of the Posts and Telegraphs Manual reads that the ownership of all Government buildings occupied by the Indian Posts and Telegraphs Department on 1.4.1921 vests in the Department, even though the buildings may have been constructed or acquired out of State Revenue. In this connection, P.W.1 has given his evidence on oath that the Sub-Post Office was running in that house over the suit land till 27.09.1967, which has received corroboration from the evidence of D.W.1 and also can be seen from the correspondence, i.e. Ext.5/H. On that aspect, the written statement averment is noteworthy when it is said that it may be a fact that the Post Office at Karanjia was functioning for some time in past with the permission of the State Government or any Authority of the Government for want of their own house at Karanjia. In that view of the matter, taking into account the provision contained in Rule 450 of the Posts and Telegraphs Manual; the Courts below are found to have committed no error in recording the finding that the suit land with the standing house is the property of the Central Government and as such the possession of the same has to remain with the Central Government.

The substantial questions of law are accordingly answered against the Defendants, which in turn run to confirm the judgments and decrees passed by the Courts below.

12. Resultantly, the Appeal stands dismissed. There shall, however, be no order as to cost.

**(D. Dash),
Judge.**

Basu