

IN THE HIGH COURT OF ORISSA AT CUTTACK

S.A. NO.316 OF 1990

In the matter of an appeal under Section-100 of the Code of Civil Procedure has assailed the judgment and decree passed by the learned District Judge, Keonjhar, in Title Appeal No.06 of 1986 by confirming the judgment and decree passed by the learned Munsif, Keonjhar in Title Suit No.22 of 1980.

Baikuntha Mahanta (Since Dead) :: Appellants
Through his LRs & Others

-versus-

Paira Bewa & Others :: Respondents

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

For Appellants - Mr. M.S. Panda, Advocate,
M/s. Somnath Nanda,
D.K. Pradhan, Advocates.

For Respondents - M/s. S.K. Mohanty,
S.P. Mohanty, Advocates.

CORAM:
MR. JUSTICE D.DASH

DATE OF HEARING::18.05.2022,DATE OF JUDGMENT::20.06.2022

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 passed by the learned District Judge, Keonjhar, in Title Appeal No.06 of 1986.

By the same, the Appeal filed by the present Respondents (Defendants) under Section-96 of the Code has been dismissed and

thereby the judgment and decree passed by the learned Munsif, Keonjhar in Title Suit No.22 of 1980 have been confirmed.

One Banamali Mahanta as the Plaintiff has filed the suit for declaration of their title over the suit land described in Schedule-Ka of the plaint seeking recovery of possession of the same from the Appellants (Defendants). That original Plaintiff having died during the suit; his legal representatives have pursued the suit being substituted as the Plaintiffs and have thus been able to obtain the decree in that regard from the Trial Court which has been confirmed in the First Appeal.

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 Suit.

3. The suit had been filed by the Banamali Mahanta, the original Plaintiff and he having died during pendency of the suit, his legal representatives have come to be substituted and have been pursuing the lis and they are hereinafter referred to as Plaintiff whereas the sole deceased Plaintiff as the original Plaintiff. It is stated by the original Plaintiff that he acquired Ac.6.69 decimals of Nayabadi land appertaining to sabik Khata No.17/17 in Nayabadi Case No.97/1944-45. He was in possession of those lands since that time

onwards. The claim/case of the Plaintiffs is confined to the land having an area of Ac.1.58 decimals which appertains the sabik Plot No.228 under Khata No.17/17. The Patta in respect of sabik Plot No.288 corresponding to hal Plot No.481 under Khata No.22 shows the area to be Ac.1.65 decimals as to have been granted to original Plaintiff. It is stated that during temporary absence of the said original Plaintiff from the village, his nephew Upendra was managing all the affairs of the suit land. During Khanapuri stage of the settlement, the possession of said Upendra being thus noted, on protest of original Plaintiff, the ROR was granted in his favour. It is further alleged that taking advantage of the temporary absence of the Banamali Mahanta, the Defendants who are adjoining tenants had encroached over the suit land. The original Plaintiff got the suit land identified by an Amin and came to know that Defendants were forcibly occupying Ac.1.58 decimals of Nayabadi land which is the subject matter of the suit.

4. The suit was decided on 27.01.1984. Appeal being carried against that decision by order dated 27.05.1985, the matter was remanded for fresh decision after deputation of Survey Knowing Commissioner with a direction for actual location of the suit plot with reference to both current settlement as well as Sabik Settlement

map. The parties then had been given the liberty to accordingly amend their pleadings and so also the Trial Court was given the handle to frame new issues as would be so required.

5. The Defendants in their final written statement as it stands after amendment asserted that the original Plaintiff had not taken any Nayabadi land and he did not possess any land to the south of their plots and land under Plot Nos.489 and 490. It is stated that mother of the Defendants were all along in occupation of the suit land since 1940 and in the current settlement, it had been so recorded under Plot No.571. It is there case that the land of the Plaintiffs covered under sabik plot No.288 is situated at a distance which appertains to Plot No.481 of the current settlement. The Defendants have stated that the Plaintiff did not choose to raise any objection before the Settlement Authority for rectification of any such mistake in the plot number and the Hal record of right being received in the year, 1976, the suit has been filed in the year, 1980 after expiry of three years. They further challenged the report of the Civil Court Commissioner deputed after remand.

6. The Trial Court has framed in total eight issues. First of all it has taken up issue nos.6 & 8 for decision. These two issues concern with the right, title and interest of the Plaintiff over the suit land and

the competing claim of acquisition of right, title and interest over the said suit land by the Defendants by way of adverse possession. On examination of evidence and their evaluation, the issues have been answered in favour of the Plaintiff. The conclusion has been as under:-

“9. From the above discussions and findings I come to a conclusion that in view of the Nayabadi lease patta Ext. 1 of the plaintiff, the disputed land situates over the Hal Plot No.488, Ac.1.28 dec. and in Hal Plot No.489 there is Ac.0.30 dec. of the land belonging to the plaintiffs which they are possessing and the amended sketch map as filed by the Civil Court Commissioner marked Ext.IX is correct and the plaintiffs have acquired their right and title over the plot No.488 and 489 in respect of the claimed portion.”

Next coming to another important issue relating to perfection of title over the suit land by the Defendants by way of adverse possession, the answer has been recorded against the Defendants. The conclusion has been arrived at by discussing the evidence on record in finally saying as under:-

“In view of such admission of defendant No.1, it is now clear that the defendants have no right nor any possession over sabik plot No.288 which the plaintiff claims and it cannot be imagine for a moment that the

defendants have acquired their title by possessing the suit plot aversely, openly and notoriously to the knowledge of the true owner. In such circumstance I am inclined to say that the defendants have failed to prove that they have perfected their title in respect of the suit land by way of adverse possession.”

7. The Defendants being aggrieved by the said judgment and decree based upon the above findings as recorded by the Trial Court having carried the appeal have been unsuccessful. Hence, the present Second Appeal.

8. The appeal has been admitted on the following substantial questions of law:-

- (i) Whether the suit is maintainable in absence of State and Chhutunu Mahanta; whether they are the necessary parties to the suit; and
- (ii) Whether the suit is barred by limitation?

9. Learned Counsel for the Appellants submitted that the Courts below having categorically found that the suit sabik Plot No.288 is corresponding to Hal Plot No.488 and 489 and when that Plot No.488 is recorded in the name of the State and Plot No.489 is recorded in the name of Chhutunu Mahanta in their absence, the suit as laid by the Plaintiff for reliefs claimed ought to have been dismissed. He submitted that the Courts below have completely

gone wrong in overlooking the subsequent settlement recording in the name of the State and Chhutunu Mahanta in the year 1976. He next submitted that when the suit has been filed after expiry of the three years from the date of publication of the Record of right in the Settlement operation, the Courts below have erred in law by entertaining the same.

10. Learned Counsel for the Respondent submitted that the very recording of the land in the name of the State under Plot No.488 and in the name of Chhutunu Mahanta under Plot No.489, when have been proved to be wholly erroneous and when they have not been found to be in possession of those plots of land, the Courts below have rightly answered that the suit is not bad for non-joinder of necessary parties. He further submitted that the suit being one for possession based on title seeking recovery of possession from the Defendants who are in unauthorized possession of the same and whose claim of acquisition of title over the possession by way of adverse possession has been rejected, the suit having not been filed within three years as provided under the provision of Orissa Survey Settlement Act, 1959 is not at all liable to be dismissed as her the relief is not for correction of the record of right simplicitor.

11. Keeping in view the rival submission, I have carefully read the judgments passed by the Courts below. I have gone through the plaint and written statement as well as the evidence both oral and documentary on record.

12. Coming to find out the answer to the substantial questions of law in addressing the rival submissions, it is seen that the Trial Court has specifically framed a issue as to non-joinder of necessary party and that is issue no.4.

Admittedly, that land assigned with current settlement Plot No.489, as per Ext.C is in the name of Chhutunu Mahanta. The Courts below on analysis of the documentary evidence has found that the Plaintiff had got Patta from the State and the Settlement Authorities have committed the mistake while preparing new plot numbers. The State having settled the land has not yet initiated any proceeding on the basis of the current settlement record against the Plaintiff. So under the circumstance, the State is not required to be made a party as it is not a case that no effective decree can be passed in the absence of State being there as a party before the case where the encroachment is alleged against the Defendants. More so, the decision in the suit would not bind the State which would be at liberty to take recourse to law if so desired.

13. Said Chhutunu Mahanta is none other than the mother of the Defendants. The Defendants have not proved a single scrap of paper as to how that land came to be recorded in the name of Chhutunu Mahanta in the current settlement record. The evidence on records at the same time reveal that the Defendant No.2 is in the physical possession of the suit land and he does not state that Chhutunu at any point of time had been in possession of the same and it is that Defendant No.2 i.e. Rajkisore Mahanta who is claiming right over the suit land. In such state of affairs, the Courts below having dealt the matter from all angles and upon detail discussion of evidence including the report of the Survey Knowing Commissioner which is so clear on the factum of encroachment have rightly held that the suit is not liable to be dismissed for non-joinder of State and Chhutunu Mahanta as parties.

14. Here, the suit is founded upon the Plaintiff's claim of right, title and interest over the suit land. It is the settled position of law that mere recording of the suit land in the settlement operation in favour of one does neither create any title in respect of the suit land in his favour nor it extinguishes the title of the true owner or/actual title holder. The Plaintiffs in the case having established their claim of right, title and interest over the suit land and when the claim of

the Defendants to be having the right, title and interest over the same or to have so acquired by adverse possession have been concurrently negatived by the Courts below which are holding the field.

The aforesaid discussion, thus answer the substantial questions of law in favour of the case/ claim of the Plaintiff and that leads to hold that the judgments and decrees passed by the Courts below are not liable to be interfered with.

15. In the result, the Appeal stands dismissed. However, there shall be no order as to cost.

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

Narayan

