

IN THE HIGH COURT OF ORISSA AT CUTTACK

S.A. NO.262 OF 1998

In the matter of an Appeal under Section-100 of the Code of Civil Procedure assailing the judgment and decree dated 16.05.1998 and 25.06.1998 respectively passed by the learned Civil Judge (Senior Division), Sonapur in Title Appeal No.05 of 1994 setting aside the judgment and decree dated 13.12.1993 and 06.01.1994 passed by the learned Munsif, Rampur in Title Suit No.68/68 of 1991-92.

Nisamani Dandasena

:::

Appellant

-versus-

*Purusottam Dandasena (Since
Dead)through his LR & Others*

:::

Respondents

**Appeared in this case by Hybrid Arrangement
(virtual/physical mode)**

For Appellant

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M/s. Manoj Misra, Sr. Advocate,
B.K. Misra, P.K. Das, B. Misra,
Advocates.

For Respondents

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M/s. S.R. Patnaik, D. Pradhan,
P. Pattnaik, N.K. Senapati,
Advocates.

CORAM:

MR. JUSTICE D.DASH

DATE OF HEARING::20.10.2022, DATE OF JUDGMENT: 23.12.2022

D.Dash, J. These Appellant, in filing this Appeal under Section-100 of the Code of Civil Procedure 1908 (for short, 'the Code'), has assailed the judgment and decree dated 16.05.1998 and 25.06.1998 respectively

passed by the learned Civil Judge (Senior Division), Sonapur in Title Appeal No.05 of 1994.

By the same, the Appeal filed by the Respondent (Plaintiff) challenging the judgment and decree dated 13.12.1993 and 06.01.1994 passed by the learned Munsif, Rampur in Title Suit No.68/68 of 1991-92, under section-96 of the Code has been allowed and thereby, the suit of the Plaintiff has been decreed by declaring his right, title and interest over the suit land with confirmation of possession.

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 Plaintiff's case is that the suit land as described in the Schedule of the plaint which included consolidable and non-consolidable plots described as per the record published in the consolidation operation is owned by him and as such he is the recorded tenant of the same. It is stated that in the consolidation operation, the record of right in respect of the suit land has been published and it has attained finality being not so challenged before any forum as available within the scheme and framework of the Orissa Consolidation of Holdings and Prevention of Fragmentation of Land Act, 1972 (hereinafter called as the 'OCH&PFL Act').

It is further stated that the Consolidation Authority while recording the suit land in the name of the Plaintiff have made certain notes as to the possession of the suit land in the said consolidation record of right which is without any jurisdiction and wholly erroneous. The Defendants by taking advantage of such note of possession created disturbances in the peaceful possession of the Plaintiff over the suit land and house, which drove the Plaintiff to file the suit.

4. The Defendants while traversing the plaint averments have pleaded that the suit land except the land under Sabik Plot No.1507 where the ancestral properties of the parties and those originally belong to Sankirtan Dandasena. Said Sankirtan Dandasena who is the common ancestor of the parties had two wives. Sribachha is the son of Sankirtan through first wife and the Kandarpa is the son of Sankirtan through the second wife. Plaintiff's father is Sribachha whereas the Defendant is the son of Kandarpa. The Defendant No.1 is the son and the Defendant Nos. 2 and 3 are the daughters of Kandarpa.

It is stated that prior to the 4th settlement operation, the ancestral properties of the parties were partitioned between two branches that is Sribachha and Kandarpa. Accordingly, the record of right were separately prepared in their names in respect of the land which had fallen in their respective shares. As regards land under Sabik Plot

No.1507; it is stated that the same has been declared as Rakhit in the 4th settlement operation. Except that land, other land and houses are said to be in possession of the Defendant's father and after him with the Defendants. Accordingly, it is stated that the Sabik Plot No.1589, 1504, 1505, 1506 and 1508, under Holding Nos. 29 and 28 correspond to the suit Plot No.1003/1087 of the consolidation record of right and those are in possession of the Defendants and so also the land under Sabik Plot No.1343 corresponding to suit plot No.523 of the consolidation record of right. It is also stated that land under Sabik Plot No.1507 corresponding to suit Plot No.1002 both stand recorded as Rakhit; those are under exclusive possession of the Defendants for last 40 years. Hence, it is said that the Plaintiffs have no right, title, interest and possession over the suit land and house. It is alleged that the plaintiffs having resorted as to fraudulent means has somehow managed to obtain the consolidation record of right in his name, but the possession noting has been rightly made. It is stated that the consolidation record of right of the suit land in favour of the Plaintiff is without any basis and jurisdiction.

5. On the above rival pleadings, the Trial Court having framed eight(8) issues has first of all rightly taken up issue no.1 for decision as that refers to the claim of the Plaintiff having right, title and interest over

the suit land. On going through the evidence both oral and documentary, especially, Exts. A, B, C, D and G and analyzing the same, the answer of this issue has been rendered against the Plaintiff. Other issues being taken up together for decision, the Trial Court has held the preparation of the consolidation record of right as totally without any basis and as such illegal. Therefore, it is said that the Consolidation Authority has exceeded in their jurisdiction in recording the suit land in that way. These issues thus were answered against the plaintiff and the suit stood dismissed.

6. The Plaintiffs being unsuccessful before the Trial Court having carried the First Appeal has however been unsuccessful in that forum. The sole ground on which the Trial Court's judgment and decree have been set at naught is that the Civil Court has no jurisdiction to sit over to examine the legality and propriety of final record of right published during the consolidation operation. Therefore, it has been held that since the Plaintiff is the recorded owner of the suit land as per consolidation record of right, the Defendants have nothing to do. It has then been said that the Consolidation Authority had no jurisdiction to record the note of forcible possession in respect of the land in the record of right and thus these notings in favour of the Defendants is illegal. Having said so, the Plaintiff's suit has been decreed by declaring their right, title and interest

over the suit confirming the possession. Hence, the present Second Appeal at the instance of the Defendants.

7. The Appeal has been admitted to answer the following substantial questions of law:-

- (a) Whether the impugned judgment of the learned Lower Appellate Court is perverse for non-consideration of Ext.A, B, C & D?

8. Mr. Manoj Misra, learned Senior Counsel for the Appellant submitted that the Plaintiffs claim of title over the suit land is solely based on consolidation record of right; when it is the evidence of the Plaintiff that he does not know the basis on which the record of right was prepared in his name in the consolidation operation in respect of the suit land and house site and he is also not giving any sort of explanation or denying the fact that there was a partition between his father and the father of the Defendants and these suit lands were in the share of the father of the Defendants and had been recorded as such in the 4th settlement which is the positive case of the Defendants. He further submitted that the Plaintiff as would reveal from the document, Ext.G, which is the order passed by the Consolidation officer in respect of the land of the parties in Dunguripali mouza (suit land is in Chingerkata

mouza) had mentioned that the suit land given in the schedule therein belong to the father of the Defendants and these facts having been totally overlooked by the Consolidation Authorities, they have not acted in conformity with the sound judicial procedure, violating the fundamental legal principles in ignoring the positive admission of the Plaintiff which has remained totally unexplained; they had no jurisdiction to record the suit land straightway in the name of the Plaintiff which appears to be whimsical and arbitrary. He further submitted that it being the admitted case that there had been partition between Sribachha and Kandarpa, the Consolidation Authority without finding that the suit land in question had fallen in the share of Sribachha should not have gone to record the suit land in the name of the plaintiff. He submitted that position of law that the Consolidation Authority has the power to decide the right, title and interest of the parties in respect of the land covered under the notification does not clothe them with the power to record any such land according to their whims and caprice in an arbitrary manner without even noting the basis for the same, particularly when they are going to make a sharp departure from the recording of the said land as it was before the operation as standing prior to that and staring at their face. He submitted that with such evidence on record the First Appellate Court should not have simply answered that the consolidation record of right is

correct in every respect and basing upon the same it ought not to have gone to decree the suit. He thus submitted that the judgment and decree passed by the First Appellate Court cannot be sustained.

9. Mr. S.R. Pattnaik, learned Counsel for the Respondents (Plaintiffs) submitted in favour of the finding returned by the First Appellate Court in decreeing the suit. According to him, the view taken by the First Appellate Court that the Civil Court cannot sit as the Court of Appeal against the order that the Consolidation Authority, who have prepared the record of right is wholly correct. He therefore, submitted that the First Appellate Court has rightly held that the Consolidation Authority had no jurisdiction to record the note of forcibly possession of the parties in respect of land covered under the record of right. He also submitted that the Defendants have not made out a case establishing those few limited contingencies under which the jurisdiction of the Civil Court is exercisable to for the tinker with the consolidation record of right.

10. Keeping in view the submission made, I have carefully read the judgments passed by the Courts below. I have also perused the plaint and written statement and have gone through the evidence both oral and documentary.

11. The Plaintiff's case is very simple that he has the right, title and interest over the suit land, which has been recorded in the final consolidation record of right in stating further that Kandarpa nor Defendant had ever possessed the suit land and therefore, such noting as to the possession of the suit land by Kandarpa in the said consolidation record of right is without jurisdiction.

At the risk of repetition, the Defendant's case be stated with details. They say that the suit land except Sabik Plot No.1507 were the ancestral properties of the parties and in a partition, it had fallen in the share of their father Kandarpa, who continued to possess the said land and accordingly, during the 4th settlement operation, the record of right of the suit land had been prepared in the name of Kandarpa in recognition of the partition between the Kandarpa and his brother Sribachha. It is also stated that Sabik Plot No.1343 corresponding to suit Plot No.523 and Sabik Plot No.1508 and 1505 corresponding to such Plot No.1003/1087 were also in possession of Kandarpa but by mistake during 4th settlement operation, the same were recorded in the name of the Plaintiff when the fact remains that the Defendants after Kandarpa are continuing to possess the same. They also state that the Plaintiff was never in possession of the suit land.

The suit property as described in the schedule of the plaint is the Consolidation Khata No.154, Chaka No.339, Chaka No.1002, Ac.10120 decimals, Plot No.1003/1087, Ac.0.913 decimals and none consolidable plot no.523 measuring Ac.0.005 decimals.

When the Plaintiff's claims his right, title, interest and possession over the suit land on the basis of consolidation record of right; the Defendants also assert their right, title, interest and possession over the suit land in saying that major part of it was the allotted share of his father in the partition between him and the father of the Plaintiff.

12. In case of ***Gulzar Khan Vrs. Commissioner Consolidation & Others***; 65(1988) CLT 440, the Full Bench of this Court at paragraph-23 have taken note of five principles enumerated in case of ***Mangulu Jal Vrs. Bhagaban Ray***; AIR 1975 Orissa 219 (Full Bench) and having indicated all those five principles; in paragraph-24, the followings have been said:-

“24. We have already said that Civil Court has got jurisdiction to interfere in two cases. In such a case also the Civil Court cannot take fresh evidence to determine which person was in possession on the particular date and as such is entitled to settlement. The Civil Court can only examine if the Collector's order is unfair, arbitrary or capricious. Such a conclusion can be reached if on the

materials placed before the Collector a reasonable man could not have reached the same conclusion. However unsatisfactory the Collector's conclusion may be, it cannot be set aside merely because a different view could be taken by the Civil Court on the materials before the Collector. Similarly, the correctness of the Collector's view cannot be tested in the light of evidence adduced before the Civil Court."

13. Bearing the above in mind in order to answer the substantial questions of law, this Court is called upon to examine the evidence on record in the backdrop of the rival pleadings; to say as to if a case has been made out to debunk the consolidation record of right and refuse the claim of the Plaintiff on the basis of the same as has been advanced in the suit.

The Consolidation record of right has been admitted in evidence and marked Ext.1. Pursuant to the same, rent having been paid, few rent receipts have been proved from the side of the Plaintiff as Ext.2 series. The plaintiff's here has not been proved the record of right of the suit land, which was before the Consolidation Authority, when the consolidation operation began i.e. previous settlement record of right which being taken as the basic land records, the Consolidation Authorities began their journey in the Consolidation Operation. The base record before them was the said settlement record of right. The

Plaintiff also does not prove any rent receipts relating to the suit land prior to the publication of the consolidation record of right in support of his prior possession. The Defendants have proved Ext.A, the certified copy of the holding No.29 of 4th settlement operation standing in the name of their father Kandarpa as well as Ext.B for the holding No.28 of the 4th settlement standing in the name of their father-Kandarpa. Exts.C and D are the settlement records of right of holding No.122 and 123 which stand in favour of the Plaintiff and Ext.E is the certified copy of the consolidation record of right of holding No.154 which stands recorded in the name of Plaintiff with note of possession in favour of Kandarpa in respect of the suit land. The Consolidation Chaka plot No.1002, 1003/1087 and 523 under holding No.154 of village Chingerkata is Ext.F. The Defendants have also proved the certified copy of the order passed by the Consolidation Officer, Dunguripalli in Case No.02 of 1983 of village, Chigerkata as referred to earlier. The Plaintiff during his cross-examination at paragraph-4 has admitted what the Defendant No.1 examined as D.W.1 has deposed that the suit land originally belong to Sankirtan, who had two wives; Plaintiff's father is the son of Sankirtan through first wife; Defendants father is the son of Sankirtan through second wife. When such is the relationship between the parties, it reveals from Exts. A and B, that the land under holding

Nos. 28 and 29 had been recorded in the name of Kandarpa towards his share and the Plaintiff had been allotted with Plot Nos. 122 and 123 vide Exts. C and D. Thus, it is clear that there was partition between the Kandarpa and Sribachha prior to the 4th settlement operation. This being the record position when the consolidation operation commenced and the parties had accepted those records till then, which was staring at the face of the Consolidation Authority, in making a total departure to the record of right of the 4th settlement operation, they should have the strong and compelling reason. Merely because the Consolidation Authority have the power to rule upon right, title and interest in respect of the land covered under the notification and prepare the record of right, they cannot do so wholly without any basis and arbitrarily at their whims like confirming the title of the land record in the name of one in favour of another. Thus, for the aforesaid, the Authority under the statute here have not acted in conformity with the fundamental principles of judicial procedure and the Civil Court will certainly have the jurisdiction to interfere with the same, in that event, finding the order to be unfair, capricious and arbitrary. Here it is found that the preparation of the land recorded by the Consolidation Authority in respect of the entire land is not founded on any base showing the connection of the suit land and its concern with the Plaintiff, that too in discarding the records in favour of

the Defendants. The Defendants having been found to be having their right, title and interest in respect of Sabik Plot No.1003/1087 as the recording of the said land by the Consolidation Authority in the record of right in favour of the Plaintiff is without any basis whatsoever by the Trial Court was absolutely correct in holding that the right, title and interest of the Defendant over those plots of land has not been extinguished by virtue of the publication of the consolidation record of right. More so, when the Plaintiff has not come forward with the case that he has been allotted such land in exchange of land with the Defendants during the consolidation operation.

All the aforesaid, provide answer to the substantial question of law that leads to set aside the judgment and decree passed by the First Appellate Court and restore those which had been passed by the Trial Court in dismissing the suit filed by the Plaintiff.

14. In the result, the Appeal stands allowed. However, in the peculiar facts and circumstances, there shall be no order as to cost is passed.

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