

**IN THE HIGH COURT OF ORISSA AT CUTTACK**

**S.A. NO.260 OF 1984**

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 Subordinate Judge, Puri in Title Appeal Nos.21/115 of 1984/83 by reversing the judgment and decree passed by the learned Additional Munsif, Puri in Title Suit Nos.76/130 of 1983/81.

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*Babaji Dutta (Since Dead) & Another* :: *Appellants*

*-versus-*

***Gobind Prasad Das (Since Dead) ∴ Respondents***  
***& Others***

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

***For Appellants*** - Mr. S.K. Das, Advocate,  
M/s. M.R. Panda, P.K. Sahu,  
A.C. Pradhan, B. Baug,  
R.K. Bhoi, P.C. Moharana,  
N.N. Mohapatra, Advocates.

***For Respondents*** - M/s. A.R. Dash, Sr. Advocate,  
Mr. A. Mohanty, Sr. Advocate  
M/s. Bikaram K. Nayak,  
S.K. Jena, B.D. Pradhan,  
P.K. Nanda, Mrs.S.L. Patnaik,  
Advocates.

**CORAM:**  
**MR. JUSTICE D.DASH**

**DATE OF HEARING::12.05.2022,DATE OF JUDGMENT::20.06.2022**

The Appellant by filing this Appeal under Section-100 of the Code of Civil Procedure 1908 (for short, ‘the Code’) has assailed the

judgment and decree passed by the learned Subordinate Judge, Puri in Title Appeal Nos.21/115 of 1984/83.

By the same, the Appeal filed by the present Respondent Nos. 1 & 2 under Section-96 of the Code has been allowed and the judgment and decree passed by the learned Additional Munsif, Puri in Title Suit Nos.76/130 of 1983/81 have been set aside whereby the Appellants (Plaintiffs) have been non-suited.

It may stated here that Respondent Nos. 1 & 2 (Plaintiffs) having died during pendency of this suit, their legal representatives has come on record and Respondent No.3 died leaving the legal representatives who are on record on being substituted in place of Respondent No.1, her name has been expunged as dead.

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. Plaintiff's case is that:-**

The properties in Schedule-A of the plaint originally belonged to one Gouranga Chinara who obtained the same on lease from the proprietor Jagannath Ballav Matha. Said Gouranga Chinara being leased out with the land was in possession of the properties and he had constructed five thatched rooms over the same and had dug a well over it. Gouranga Chinara was in possession of the suit property and was

residing there till 1952. In the year 1952, Gouranga Chinara being in need of money transferred the suit property to one Nakhi Bewa by registered sale-deed dated 20.08.1952 vide Ext.1 for valuable consideration of Rs.1,000/-. Possession was accordingly delivered by Gouranga to the purchaser, Nakhi Bewa and he along with his brothers as such succeeded to the properties of Nakhi Bewa. It is stated that in an amicable partition as the disputed property had fallen to the share of Plaintiff No.1, he continued to possess the same. It is further stated that Nakhi Bewa during her lifetime was residing in the front two rooms when other three rooms in course of time were raised to the ground. After the death of Nakhi Bewa, present Plaintiffs stayed in those two rooms and as they did not need those other three rooms they did not take care to put up those again. The Defendants are said to have forcibly entered into the suit property and started repairing those three rooms, sometime in the month of May, 1981. The Plaintiff then protested to it. However, the Defendants without listening them continued with their work. So finally the matter was reported to police and thereafter the suit was filed.

4. The Defendant Nos. 1 and 2 in their written statement while traversing the plaint averments have stated that the properties never belonged to Gouranga and he was never in possession of the same. It is also stated that Gouranga had never transferred the suit property to

Nakhi in the year, 1952. The sale-deed if any is said to be a nominal one and Nakhi Bewa never possessed the suit land. It is their case that Nakhi Bewa being a care taker of the lodging house owned by Gouranga Chinara was residing therein where she died. After the death of Nakhi, the present Plaintiffs did never possess the suit land. The Defendants claimed to have never forcibly entered into the suit property as alleged by the Plaintiffs to be some time in the month of May, 1981. It is their case that in the year 1954, they went over the suit property and constructed the rooms and since then they have been in possession of the same. It is stated that Jagannath Ballav Matha included the suit property in a claim case and therefore, the Defendant No.2 filed a petition in the said case alleging to be a tenant in view of his long possession and asserting as such. The petition filed by Defendant No.2 was considered by the competent authority and the suit property was thus excluded from the purview of the claim case levied by Jagannath Ballav Matha and the order vide Ext.D has been passed by the Estate Abolition Collector. After that, the Defendant No.2 paid the rent which was accepted by the authorities from him and thus, he has been in possession of the suit property in question by paying rent and taxes.

5. On such rival pleadings, rightly the Trial Court has taken up the issue as to the claim of the Plaintiff having right, title, interest and

possession over the suit land as the answer to that would decide the fate of the suit.

On examination of evidence and their evaluation, the Trial Court answered the said issue in favour of the Plaintiff that they have the right, title and interest over the suit land and are entitled to possess the same.

6. The Defendants being aggrieved by the said decision of the Trial Court having preferred the Appeal have been successful in getting the Plaintiffs non-suited. Thus, the present Appeal is at the instance of the Plaintiffs.

7. The Appeal has been admitted to answer the substantial questions of law as to the legal validity of Ext.D to act against the title of the Plaintiffs.

Ext.D is the order passed by the OEA Collector (Tahasildar) on 12.01.1976 and pursuant to that the Patta has been granted vide Ext. A to the Defendant No.2.

8. Mr. M.R. Panda, learned Counsel for the Appellants submitted that the Trial Court when upon thread bare discussion of the evidence on record has rightly held that order of settlement of the land in question by the OEA Collector in favour of the Defendant No.2 is

void, the First Appellate Court has erroneously decided it to be having the final say over the matter and merely on the basis of that has been swayed away to hold that the Plaintiffs have no right, title and interest over the suit land and are in possession of the same. He relied upon the decisions of this Court in case of *Bhagaban Gouda Vrs. Ukia Dei*; AIR 1975 Orissa 139 and *Radhamani Dibya and Others Vrs. Braja Mohan Biswal and Others*; **AIR 1984 Ori. 77, 1984 I OLR 72.**

9. Mr. Asok Mohanty, learned Senior Counsel for the Respondents submitted all in favour of the findings recorded by the First Appellate Court. According to him, the First Appellate Court has rightly held that in view of the settlement of the land by the OEA Collector in favour of the Defendant No.2, his title in respect of suit land cannot be questioned in the suit as that order has attained finality. He further submitted that the jurisdiction of the Civil Court is very limited to set aside the said order and declare the same as void as also the subsequent action such as the issuance of Patta and as per the law settled in catena of decision of this Court, it is only when the principle of natural justice is found to have been violated and the mandatory provisions of law required to be followed in those proceedings have not been adhered to; the Civil Court can ignore said order of settlement in not giving any weightage to the same holding that those carry no value in the eye of

law. It was submitted that the principles of law set out in the decisions of *Bhagaban Gouda* (supra) have no application to facts and circumstances of the instant case rightly stated by the First Appellate Court.

**10.** Keeping in view the submissions made, I have carefully read the judgments passed by the Courts below.

Admittedly, the suit property vested with the Stated in the year, 1974. The Jagannath Ballav Matha then preferred the claim for settlement of the suit property as also other properties. In the said claim case, the Defendants having filed their application finally order dated 12.01.1976 was passed which has been admitted in evidence and marked Ext.D. Pursuant to the said order, the Defendants have been issued with the Patta which has been admitted in evidence and the marked Ext.A. There has been no such application from the side of the Plaintiffs in respect of the suit property at that point of time. The Plaintiffs have never challenged this order of settlement before any forum as provided in law and it is only impeached in the suit filed in the year 1980. It is stated that they were not the parties to the said claim petition. The First Appellate Court has found the Trial Court's view that the settlement is void as erroneous finding fault with it that the Trial Court has taken said settlement to be one under Section-8(2) of the Orissa Estate Abolition Act which is not the case here when in

the instant case, the suit property has been settled in favour of the Defendants on the basis of their long possession which too has been admitted by the Plaintiffs witness i.e. P.W.3 who has deposed on oath that the Defendants are in possession of the suit property for last 23 years and have been staying in the suit house for last 25 years. The First Appellate Court has found Gouranga Chinara to be having no alienable right over the suit land and then has said that by purchase under Ext.1, Nakhi Bewa had not derived any title over the suit land. In that view of the matter, it has been held by the First Appellate Court that Nakhi having no title over the property, the Plaintiffs claim to have succeeded to the same on the death of Nakhi Bewa is untenable. Therefore, the oral evidence on record deriving the support from the documents Ext.A, the Patta, Ext. B series, the rent receipts and the Ext. C series which are the Municipal Tax receipts, the conclusion has been arrived that the Defendants were in possession of the suit property and they have so acquired title over it on the strength of the order under Ext.D.

In the given case, the settlement is not under section-8(2) of the OEA Act. The Defendants long possession of the suit land being so found as a matter of fact, said order under Ext.D has been passed. In view of this, the cited decision in case of *Bhagaban Gouda* (supra) is of no help to sustain the contention of the learned Counsel for the

Plaintiffs. The facts and circumstances of the given case being different, the ration of the decision in case of *Radhamani Dibya* (supra) does not come to the rescue of the Plaintiffs.

The Jagannath Ballav Matha has neither questioned the order Ext.D in respect of the suit land standing in favour of the Defendants nor has taken any step as per law against the Defendants in respect of said property as yet. In view of the aforesaid, in my view, the First Appellate Court did commit no error in holding that the Plaintiffs do not have the right, title, interest and possession over the suit land as they claimed. The substantial questions of law thus, being answered as above; it is held that the Appeal is liable to be dismissed.

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

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

*Narayan*