

IN THE HIGH COURT OF ORISSA AT CUTTACK

SA No.30 of 1998

Smt. Sukamani Roiut & Others* *Appellants

-versus-

Debendranath Pradhan & Others* *Respondents

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

ORDER

12.04.2022

Order No.

16. 1. This matter is taken up through hybrid arrangement (virtual/physical) mode.

2. The Appellants, by filing this Appeal under Section 100 of the Code of Civil Procedure (for short, 'the Code'), have filed the judgment and decree passed by the learned Additional Civil Judge, Senior Division, Balasore in T.A. No.33 of 1993 (4 of 1994).

By the same, the judgment and decree passed by the learned Munsif, Balasore in T.S. No.490 of 1991 have been confirmed and the First Appeal filed by these Appellants (Defendants 2 and 3) under Section 96 of the Code, has been dismissed.

It may be stated here that one of the Appellants in the First Appeal, i.e., Defendant No.2 having died during pendency of said Appeal, his legal representatives having come on record, pursued the Appeal with the other Appellant (Defendant No.3) and they all had filed the present Appeal. During pendency of this Appeal, one of the original Appellants, namely, Baidhar Rout (Defendant No.3) having died, his legal representatives have come on record.

Respondents 1 to 4 are the Plaintiffs in the original suit before the Trial Court.

3. 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.

4. The Plaintiffs had filed the suit for declaration and permanent injunction essentially questioning the sustainability of the order passed by the Tahasildar, Balasore on 06.02.1988 in Misc. Case No.2/13 of 1987. By the said order, the Tahasildar in that suo motu proceeding under Rule 34 of the Orissa Survey and Settlement Rules, had passed the order for correction of the major settlement operation record concerning the suit land for recording of the land in question in favour of the State instead of the Plaintiffs. The Trial Court declared that order passed by the Tahasildar, Balasore in suo motu proceeding vide Misc. Case No.2/13 of 1987 is illegal and not binding on the Plaintiffs.

The Defendants 2 and 3, being aggrieved by the said judgment and decree, having carried the First Appeal, have been unsuccessful.

5. Heard Mr.D.P. Mohanty, learned counsel for the Appellants and Mr.S.Mantry, learned counsel for the Respondents 1 to 4. I have also heard Mr.G.N.Rout, learned Additional Standing Counsel for the Respondent No.5.

6. Going through the judgments passed by the Courts below, it is seen that the order passed by the Tahasildar, as above, has been declared as illegal and not binding on the Plaintiffs on the ground that the same has been passed in violation of the principles of natural justice.

It has been held by the Trial Court that the Plaintiffs had not been given due opportunity to have their say in that suo mtou proceeding before the Tahasildar. Finally, the Trial Court, having said that the order is illegal as had been passed violating the principle of natural justice, the controversy as to whether the Plaintiffs have acquired the suit property by way of amalnama patta being the exclusive owner of the same paying the land revenue to the State and the validity of the same has not been so decided as there was no prayer to that effect in the suit. In the absence of that, the Plaintiff has been declined to be granted with the prayer for issuance of permanent injunction against the Defendants. That has also been the conclusion of the First Appellate Court.

7. It is submitted at the Bar that no information is available to place before this Court as to whether after the decree passed in the suit and confirmed in the First Appeal, Tahasildar, Balasore has revived the said proceeding for its fresh disposal in accordance with law after following the principles of natural justice by giving opportunities to the parties to have their full say or if any such other legal proceeding has been initiated for the same. It is admitted at the Bar that in the suit as well as in the First Appeal, the order of the Tahasildar being declared as illegal and not binding on the Plaintiffs, no decree of permanent injunction, as prayed for by the Plaintiffs has even been allowed. They fairly submit that the judgments and decrees passed in the suit as well as in the First Appeal do not stand on the way of the State to initiate appropriate proceeding or to pursue the earlier proceeding in accordance with law for their disposal in accordance with law by following the principles of natural justice.

8. The Courts below having held that the order passed by the Tahasildar in Misc. Case No.2/13 of 1987 as illegal on the ground as already stated; it goes as without saying that the same would not stand on the way of the Competent Authority to proceed with the matter further by following the principles of natural justice for its disposal in accordance with law and also do not stand as the impediment for the State to initiate the appropriate proceeding as known to law for rectification of any error or undoing the mischief, if any, for its culmination in accordance with law.

9. This Appeal is accordingly disposed of at this stage of admission. No order as to cost.

Basu

