

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

**S.A. No.268 of 1998**

In the matter of Appeal under Section 100 of the Code of Civil Procedure assailing the judgment and decree 27.04.1998 and 07.05.1998 respectively passed by the learned Additional District Judge, Sambalpur in T.A. No.16/2 of 1993-97 confirming the judgment and decree dated 19.01.1993 and 04.02.1993 respectively passed by the learned Munsif, Sambalpur, in T.S. No.82 of 1988.

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***Hira Kisan & Others***

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***Appellants***

-versus-

***Mst. Harabati Kisan & Others***

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***Respondents***

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

***For Appellants***

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Mr.C.A. Rao  
(Senior Advocate)

***For Respondents***

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Mr.B.C. Panda  
(Advocate for R.1 to 7 & 9)  
Mr.S. Mishra,  
(Advocate for R.8)

**CORAM:**

**MR. JUSTICE D.DASH**

**Date of Hearing : 19.10.2022 : Date of Judgment:25.11.2022**

***D.Dash,J.*** The Appellants, in this Appeal under Section 100 of the Code of Civil Procedure, 1908 (for short, 'the Code'), assail the judgment and decree 27.04.1998 and 07.05.1998 respectively passed by the learned Additional District Judge, Sambalpur in T.A. No.16/2 of 1993-97.

By the same, the Appeal filed by the original Appellant therein, namely, Lima Kisan (Plaintiff) under section 96 of the Code, which was pursued by his legal representatives upon his death, has been dismissed

and thereby the judgment and decree dated 19.01.1993 and 04.02.1993 respectively passed by the learned Munsif, Sambalpur, in T.S. No.82 of 1988 have been confirmed. These Appellants thus being the unsuccessful legal representatives of the original Plaintiff have filed the present Appeal against the Respondents.

It be stated here that some of the Defendants, having died during pendency of the First Appeal, their legal representatives had been brought on record.

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 case of the Plaintiff is that one Chandra Kisan had four sons, namely, Gadha, Ghasi, Kana and Sabal. The Plaintiff and Defendant No.5 represent the branch of Ghasi. The Defendant Nos.1 to 4 represent the branch of Kana (Defendant Nos.1 & 2 being the grandson of Kana through son Pandru and Defendant Nos.3 & 4 being the great grandson of Kana through his son Suru and grandson Chaitan. It is stated that there was an amicable partition amongst four sons of Chandra before the Hamid Settlement Operation. The partition was in metes and bounds. Each branch got their separate shares in the property and possessed those separately and accordingly those lands were separately recorded in the record of rights of Hamid Settlement. It is stated that the share of Ghasi was recorded in his name vide Hamid Settlement Khata No.26 of Mouza-Darba and after the death of Ghasi, the same was mutated in the name of the Plaintiff and his brother Banarasi, who is the father of Defendant No.5. They were possessing the lands and paying the rents. In the records of the Major Settlement finally published in the year 1978,

the lands under Hamid Settlement Khata No.26 and their purchased lands under Hamid Settlement Khata No.48 were recorded in their names under Major Settlement Khata No.278. During such settlement, Hamid Settlement Plot No.1032 measuring Ac.0.21 decimals, Plot No.1033 measuring Ac.0.33 decimals and Plot No.1034 measuring Ac.0.17 decimals, thus in total Ac.0.71 decimals were wrongly recorded in the name of Defendants 1 & 2 under Major Settlement Khata No.276 under Major Settlement Plot No.1605 measuring Ac.0.71 decimals. This recording is said to be wrong. It is stated that because of such wrong recording of the land of the Plaintiff and Defendant No.5 under Hamid Settlement Khata Plot Nos.1032, 1033 & 1034 in the name of the Defendants 1 & 2 in their Major Settlement Khata No.276 instead of Major Settlement Khata No.278 of the Plaintiff and Defendant No.5; the Defendants 1 & 2 started to create disturbance in the peaceful possession of the suit land by the Plaintiff and Defendant No.5. Then, the Plaintiff could know the mistake in the recording of the suit land. So, they brought it to the notice of the Defendants 1 & 2 for necessary rectification, which was turned down. The Plaintiffs, therefore, filed the suit for declaration of their right, title and interest over the suit land under Major Settlement Plot No.1606 appertaining to Major Settlement Khata No.276 claiming that the same since corresponds to their Hamid Settlement Plot Nos.1032, 1033 & 1034, the Defendants 1 & 2 have no right, title and interest over the same. The Plaintiff also sought for a decree of confirmation of possession and in the alternative, for recovery of possession, if found to have been dispossessed.

4. The Defendant Nos.1 and 2, while admitting the genealogy, denied the fact that the lands under M.S. Plot Nos.1605 measuring Ac.0.71 decimals had fallen to the share of Ghasi. They, on the other

hand, claim the same to have fallen in the share of Kana, who was in peaceful possession of the same. It is stated that after the death of Kana, they inherited and possessed the same. It is stated that the same had fallen to the share of their father Pandru and being the sons, they are possessing the same on their own right, title and interest without any disturbance from any quarter at any point of time. They assert that the suit land has been rightly recorded under Major Settlement Plot No.1605 measuring Ac.0.71 decimals in their Major Settlement Khata No.276 and accordingly, they are paying the rents. It is stated that rightly the recording of the said land has not been made in the name of Plaintiff and Defendant No.5 in their Major Settlement Khata No.278 as they were never in possession of the said land.

5. On the above rival pleadings, the Trial Court framed in total five issues. Answering issue nos.1 to 3 in favour of the Plaintiffs, the Trial Court, upon examination of evidence and their evaluation, has answered issue nos.4 & 5 in favour of the Defendant Nos.1 & 2. This answer has led for dismissal of the suit.

6. The unsuccessful Plaintiff then had moved the First Appellate Court by filing the Appeal, which was pursued by his legal representatives. The First Appellate Court has refused to set aside the judgment and decree passed by the Trial court. The dismissal of the suit of the Plaintiff thus having been confirmed in the First Appeal, the present Second Appeal has come to be filed.

7. The present Appeal has been admitted to answer the substantial question of law as finds mentioned in paragraph-9(A) of the Memorandum of Appeal, which reads as under:-

“In view of the settled principle of law that, facts admitted need not be proved and in the instance case, no specific pleading being made by the contesting defendant that, Hamid Settlement Plot Nos.1032, 1033 & 1034 under Khata No.26 does not correspond to Major Settlement Plot No.1605 under Khata No.276, which amounts the admission of the fact pleaded in the plaint, whether the learned Courts below are justified is holding that, there is no proof correlating these plots of both the settlement?”

8. Learned counsel for the Appellant submitted that when the Trial Court upon discussion and their evaluation has observed that the Plaintiff has amply proved that they are the owners in possession of the lands under Hamid Settlement Plot Nos.1032, 1033 & 1034, it was then again not justified on its part to hold that there is nothing on record to correlate the fact that the suit land under the above Hamid Settlement plots does not correspond to M.S. Plot No.1065 under Khata No.276, having held the Plaintiff to be the original owner in possession of the suit land as per Hamid Settlement record of right. He next submitted that with the evidence on record, since there was no specific issue as to establishment of the nexus between the land recorded under Hamid Settlement and Major Settlement, it is a fit case for remand of the suit to the Trial Court to provide an opportunity to the Plaintiff to correlate the Hamid Settlement plot with Major Settlement plot as mentioned in Schedule-A of the plaint instead of putting an end to the lis here at this stage.

None appeared on behalf of the Respondents despite opportunity.

9. Keeping in view the submissions made, I have carefully read the judgments passed by the Courts below. I have also gone through the plaint and written statement and have perused the evidence let in by the parties.

10. The Plaintiff's suit is for declaration of right, title, interest and possession over the land as recorded in the Major Settlement vide Plot no.1605 under Khata No.276. It is stated that the said land has been wrongly recorded in the name of Defendants 1 & 2. It has been the specific case of the Plaintiff that this land was the land which stood recorded in the Hamid Settlement Record vide Plot Nos.1032, 1033 & 1034 under Khata No.26 in the name of the Plaintiff. Above being the very case of the Plaintiff, in my considered view, no such specific issue ought to have been framed for the reason that it being a suit for declaration of title and possession over the suit land, the Plaintiff, from the very beginning, is conscious of the fact that in order to succeed, he has to prove the fact that the land recorded under those plots as per the Hamid Settlement record correspond to the land recorded under the plot appertaining to the Khata of Major Settlement, which has been indicated in Schedule-A of the plaint.

There is no dispute that the land which had fallen to the share of Ghasi stood recorded under Hamid Settlement Khata No.26 vide Ext.1, which measured Ac.16.66 decimals and that the same has been mutated in the name of the Plaintiff and his brother in 1938-39 vide Ext.2. It is also not denied that the Plaintiff had purchased certain lands with his brother, which was under Hamid Settlement Plot No.273 measuring Ac.1.00 appertaining to Hamid Settlement Khata No.48 by registered sale deed (Ext.5) and that the lands under the Hamid Settlement Khata Nos.26 & 28 were recorded in the name of the Plaintiff and his brother during Major Settlement Operation under Major Settlement Khata No.278 and the record of the same had been published on 06.06.1978. Admittedly, the lands fallen to the share of Kana and possessed by

Defendants 1 and 2 have been recorded in the Major Settlement in Khata No.276 (Ext.A).

The lands under Plot Nos.1032, 1033 & 1034 under Hamid Settlement measured Ac.0.21 decimals, Ac.0.33 decimals and Ac.0.77 decimals respectively and that in total comes to Ac.0.131 decimals, which was in the name of Ghasi in his Hamid Settlement Khata No.26 whereas Major Settlement Plot No.1066 under Major Settlement Khata No.276 stands recorded in the name of Defendants 1 & 2 which measures Ac.0.71 decimals. Thus, it cannot be said that the suit Major Settlement Plot No.1606 measuring Ac.0.71 decimals is corresponding to Hamid Settlement Plot No.1032, 1033 & 1034 whose area is much more and that extents to Ac.1.31 decimals whereas Schedule-A description of the area covering those three plots as per Hamid Settlement has been given as Ac.0.71 decimals. The evidence of P.W.4, who is the son of the original Plaintiff is that those three Hamid Settlement plots measured 109 decimals. So, from this, the Courts below have said that the Plaintiff is not sure about the actual extent of the suit land and only, because of Major Settlement Plot No.1606 measure Ac.0.71 decimals, a claim has been made that the above Hamid Settlement Plots measure Ac.0.71 decimals cannot be said to be wrong. The Plaintiff examined as P.W.3, in his deposition, has stated that he had got the preliminary parcha, which was correct in every respect, but that having not been filed, the approach of the First Appellate Court in adversely viewing such a claim appears to be correct. The First Appellate Court has further discussed the evidence of the Plaintiff, who has been examined as P.W.3 and on an independent analysis of the same at its level by examining the same from different angles, the same conclusion, as had been reached at by the Trial Court, has been reached at that the Plaintiff has failed to prove

that the lands under Major Settlement Plot No.1606 corresponds to the land under Hamid Settlement Plot Nos.1032, 1033 & 1034.

For the foregoing discussion and reasons; this Court finds no such reason or justification to take a view to the contrary.

The substantial question of law is accordingly answered, which leads to confirm the judgments and decrees passed by the Courts below.

**11.** In the result, the Appeal is dismissed. There shall, however, be no order as to cost.

*Basu*

