

IN THE HIGH COURT OF ORISSA AT CUTTACK

RSA No.386 of 2007

In the matter of an appeal under section 100 of the Code of Civil Procedure assailing the judgment and decree dated 27.06.2007 and 10.07.2007 respectively passed by the learned Additional District Judge, Jagatsinghpur in R.F.A. No.45 of 2002 confirming the judgment and decree dated 10.07.2002 and 19.07.2002 respectively passed by the learned Civil Judge, Junior Division, Kujanga in T.S. No.34 of 1990.

Pahali Pradhan & Others

....

Appellants

-versus-

Government of Orissa & Others

....

Respondents

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

For Appellants - Mr.D.K. Sahoo-I, P. Mishra-I &
B.K. Behera
(Advocates)

For Respondents - Mr.G.N. Rout, ASC
For R.1 and 2

CORAM:

MR. JUSTICE D.DASH

Date of Hearing : 05.04.2022 : Date of Judgment:11.04.2022

The Appellants, by filing this Appeal under Section 100 of the Code of Civil Procedure (for short, 'the Code'), have assailed the judgment and decree dated 27.06.2007 and 10.07.2007 respectively passed by the learned Additional District Judge, Jagatsinghpur in R.F.A. No.45 of 2002.

By the same, the first Appeal filed by the present Appellants under section 96 of the Code challenging the judgment and decree dated 10.07.2002 and 19.07.2002 respectively passed by the learned Civil

Judge, Junior Division, Kujanga in T.S. No.34 of 1990, has been dismissed.

Pahali Pradhan and his three brothers, as Plaintiffs, had filed the suit. One of the Plaintiffs, namely, Dhruba Charan, having died during pendency of the suit, his legal representatives are there on record and they with others are the Appellants in the instant 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 Plaintiffs' case is that the properties described in Schedule-A of the plaint are the purchased properties of their father which correspond to the land under C.S. Plot No.286 and 1/731 measuring Ac.0.16 decimals used as bari. During consolidation operation, the same was recorded in the name of Plaintiffs appertaining to Consolidation Plot No.129 measuring Ac.0.16 decimals. It is stated that while delineating the villager map, the said plot no.129 has, however, been configured as Ac.0.13 decimals and there has been a reduction of Ac.0.03 decimals. This reduced extent of land from out of plot no.129, as per the case of the Plaintiffs, is said to have gone to the land under plot no.136 to an extent of 20 kadis and to the plot no.138 to an extent of 25 kadis as shown in the schedule given in the plaint. It is further stated that Schedule-B land of Mouza-Zillanasi corresponding to C.S. Khata No.234, C.S. Plot No.1 having Ac.0.27 decimals; out of the same area of Ac.0.03 decimals as specifically shown in plot no.130 has been included in L.R. Plot No.131-Ac.0.09 decimals, L.R. Plot No.132-Ac.0.03 decimals, L.R. Plot No.133-Ac.0.07 decimals and L.R. Plot No.133/891-Ac.0.05 decimals in total Ac.0.24 decimals in respect of

sabik land of Ac.0.27 decimals. The shortfall area thereof has been shown against these L.R. Plots. It is stated that the above Schedule-B land to an extent of Ac.0.12 decimals from C.S. Plot No.1 was obtained by the Plaintiff No.1 in Lease Case No.300/75. The father of the Plaintiffs obtained lease in respect of portion out of C.S. Plot No.1 as granted by the Tahasildar, Kujanga on 24.01.1974. The remaining area of Ac.0.8 decimals was purchased by the Plaintiffs' father from one Duruju Behera, the brother of Defendant No.7. After the death of Plaintiffs' father, the Plaintiffs have been continuing to possess in total Ac.0.27 decimals of land and Schedule-B land is being used as homestead land by the Plaintiffs exclusively. The short fall area of Ac.0.03 decimals was against the Plaintiffs' interest and is said to have been the wrong committed by the Consolidation Authority in preparing the map. It is alleged that the land of Ac.0.03 decimals, which is the short fall of Consolidation Plot No.129, has been erroneously amalgamated in Consolidation Plot Nos.136 and 138 under the possession of Defendants 4 to 6 while the short fall in Schedule-B land have been included in the share of Defendant No.8. The Plaintiffs, therefore have filed the suit seeking the principal relief as under:-

“(i) let the title of the Plaintiff over the suit schedule land as given in red ink in the sketch map may be declared and the consolidation map of Plot No.129 may be corrected as Ac.0.16 decimals taking the red portion of plot nos.136 and 138 and the consolidation map of L.R. Plot No.131, L.R. Plot No.132, L.R. Plot No.133 and L.R. Plot No.133/891 may be rectified and corrected as Ac.0.27 decimals included the land shown in red ink of plot no.130.”

4. The Defendants 4 to 6, in their written statement, have denied that Hal Plot No.136 touches Consolidation Plot No.129. They state that plot no.136 belonged to Defendants 3 to 6. It is their case that after vesting

of the estate, the sons of Daitari, namely, Harekrushna and Rama Chandra Das got lease of the lands under khata no.304 to an extent of Ac.0.68 decimals as ordered by the the Revenue Officer, Kujang, which stood renumbered as plot no.1/733-Ac.0.12 decimals mentioned as 'Bari' and plot no.127-Ac.0.56 decimals mentioned as 'Biali' and since then Harekrushna (father of the Defendants 3 to 6) and Ram Chandra Das were paying rent to the Anchal Officer and continuing in possession since 1953-53 till 1987-88. It is stated that in the last settlement, it was revealed that plot no.127-Ac.0.56 decimals was recorded in the name of Harekrushna and Rama Chandra and plot no.1/733=Ac/0.12 decimals was lying vacant. After Consolidation Operation, plot no.1/733 was divided into two plots being numbered as plot no.123-Ac.0.05 decimals and remaining area of Ac.0.07 decimals stood recorded in the name of State in the consolidation plot no.123 which was again sub-divided as Ac.0.03 decimals standing recorded in the name of Defendatns 3 to 6 being the sons of Harekrushna and Ac.0.02 decimals standing recorded in the name of Rama Chandra as per the Kachha Farda filed before the Consolidation Authority. Again while the final consolidation record of right was issued, plot no.123 changed to plot no.136 with an area of Ac.0.03 decimals which was recorded in the name of Defendants 2 and 4 to 6.

The Defendants 1 and 2 have not filed any written statement and have been set ex parte.

5. Faced with the rival pleadings, the Trial Court in total framed five issues. Answering issue no.4 regarding the Plaintiffs' claim of right, title and interest over the suit land, upon discussion of evidence and their evaluation, the finding has been recorded that the Plaintiffs have not been able to establish that they have the right, title and interest over the

suit land as indicated in Schedule-A and B of the plaint. The issue, with regard to challenge to the consolidation map by the Plaintiffs, has been answered against the Plaintiffs. The above answers have led the Trial Court to dismiss the suit. The First Appellate Court being moved by the Plaintiffs, who stood non-suited by the Trial court, has again been unsuccessful. Hence, the present Second Appeal

6. Learned counsel for the Appellants submitted that the Courts below have failed to appreciate the evidence let in by the Plaintiffs in their proper perspective. According to him, the inherent defect in the map being proved as regards the reduction of the area, the Courts below ought to have decreed the suit in so far as the Schedule-A land is concerned since in respect of Schedule-B land which is said to have been included in the share of Defendant No.8, the suit has abated vide order dated 13.08.1991. He, therefore, submitted that the Appeal be admitted on the above substantial question of law.

7. Learned Additional Standing Counsel for the Respondents 1 and 2, assisting the Court in the exercise of finding out the substantial question of law, submitted that the Plaintiffs having essentially sought for the relief of correction of the consolidation map which has become final in respect of the entire area; suit is not maintainable and on that ground alone, the Plaintiffs are liable to be non-suited.

8. Keeping in view the submissions made, I have carefully gone through judgments passed by the Courts below.

The case of the Plaintiffs is that the land under plot no.129 measuring Ac.0.16 decimals which is the bari land as per the consolidation record of right corresponds to C.S. Khata No.286 and plot no.1/731 for an extent of Ac.0.16 decimals which had been purchased

by their father. However, the Plaintiffs have not established the co-relationship by clear, cogent and acceptable evidence. This finding being essentially a finding on fact, this Court having carefully read the discussion of the evidence made by the Court below and on going through the evidence is not able to notice any such infirmity, much less to say any such perversity. In that view of the matter, the First Appellate Court having said that mere filing of the consolidation record of right and sabik record of right or village map is not enough to establish the relationship; this Court too does not find any such reason to express any such dissenting opinion.

As regards the claim of reduction of Ac.0.03 decimals in the map, the above is also the situation. The Defendants have pleaded regarding the correctness of the record of right with reference to the documents, which they are possessing which too by calling for a report from the Amin been affirmed by the order of the Consolidation Officer, Samagol, Kujang. This has not been assailed by the side of the Plaintiff by invoking the relevant provisions contained in Orissa Consolidation of Holding and Prevention of Fragmentation of Land Act, 1972 (for short, 'the OCH & PFL Act'). The consolidation record of right and map finally published have thus attained finality. Accordingly, the suit seeking to tinker with the same in any manner is not maintainable and the Civil Court has no jurisdiction to sit over to decide the correctness of the said record and map when for redressal of any grievance over the same, the party aggrieved has the forums available under the OCH & PFL Act.

9. In that view of the matter, this Court finds that no such substantial question of law surfaces in this Appeal meriting its admission.

10. In the result, the Appeal stands dismissed. There shall, however, no order as to cost.

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



Basu