

IN THE HIGH COURT OF ORISSA AT CUTTACK

R.S.A. No.211 of 2005

In the matter of appeal under Section 100 of the Code of Civil Procedure assailing the judgment and decree dated 27.01.2005 and 05.02.2005 respectively passed by the learned Additional District Judge, Bhadrak in Title Appeal No.58 of 1993 setting aside the judgment and decree dated 22.07.1992 and 05.08.1993 respectively passed by the learned Munsif, Bhadrak in O.S. No.235 of 1987-I.

Sri Brundaban Beuria & Others* *Appellants

-versus-

***State of Orissa, represented
through Collector, Bhadrak &
Others* *Respondents***

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

***For Appellants* - Mr.S.P. Mishra,
Senior Advocate**

***For Respondents* - Mr.B.Panigrahi
(ASC for Rs.1 & 2)
Mr.K.N. Jena
(Advocate for R.3)**

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

Date of Hearing : 26.08.2022 : Date of Judgment:06.09.2022

D.Dash,J. The Appellants, by filing this Appeal under Section 100 of the Code of Civil Procedure, 1908 (for short, 'the Code'), have assailed the judgment and decree dated 27.01.2005 and 05.02.2005 respectively passed by the learned Additional District Judge, Bhadrak in Title Appeal No.58 of 1993.

By the same, the Appeal filed by the Respondent No.3 and another, i.e., Defendant No.4 (expunged as dead during the First Appeal) under section 96 of the Code, has been allowed and thereby the judgment and decree dated 22.07.1992 and 05.08.1993 respectively passed by the learned Munsif, Bhadrak in O.S. No.235 of 1987-I have been set aside. The suit filed by the predecessor-in-interest of the Appellants, i.e., Nidhiram Beuria has thus been dismissed.

It may be stated here that Nidhiram Beuria having died during pendency of the First Appeal, his legal representatives, who are the present Appellants, contested the said 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 Trial Court.

3. The Plaintiff's case is that the suit land under Major Settlement Plot No.2710 measuring Ac.0.04 decimals recorded under Gharabari Kisam with a house standing thereon as also Plot No.2711 measuring Ac.0.02 decimals under Gharabari Kisam stood recorded in the Rakhit Khata No.1176 of Mouza-Shampur in favour of the State of Orissa (Defendant No.1). It is stated that in the record of right as against Plot No.2710, in the remark column, possession of Mahatab Seva Sadan finds mention and as against the other plot, possession of Rameswarlal Gupta and Kalilal Gupta was noted. The suit is filed with the prayer for declaration of right, title and interest, confirmation of possession and permanent injunction.

The Plaintiff claims to have acquired the suit land corresponding to C.S. Plot No.1414 measuring Ac.0.03 decimals, Plot No.1415 measuring Ac.0.07 decimals under Khata No.572 by an unregistered

lease deed (Ext.2) coming into being on the 20th of Magha 1344 Sala from Ex-landlord Choudhury Brindaban Chandra Harischandra Ray Mohapatra way back in the year 1907. Since the Plaintiff was serving at a distant place, it is stated that in the Major Settlement, the land was not so recorded in his name and the record of right was erroneously published therein. It is further stated that the Plaintiff has all along been in possession of the said land. The Defendants 1 and 2, i.e., the State and its functionaries have asserted that the said unregistered lease deed (Ext.2) is a forged and fabricated document. It is stated that on enquiry, it has been found that C.S. Plot No.1414 corresponds to M.S. Plot No.2709 measuring Ac.0.02 decimals, which has been recorded in the Major Settlement under Sthitiban Khata No.510 in the name of the Plaintiff. The land under C.S. Plot No.1415 corresponds to M.S. Plot No.2710 measuring Ac.0.04 decimals standing recorded under Rakhit Khata No.1176. It is further stated that on enquiry, it has been ascertained that the land under M.S. Plot No.2711 measuring Ac.0.02 decimals corresponds to parts of Plot No.1416, 1415 and 1413 recorded under Rakhit Khata. It is asserted that no tenancy ledger in the name of the Plaintiff in respect of C.S. Plot Nos.1414 and 1415 was there when the tenancy ledger No.272/40 refers to C.S. Plot Nos.1420, 2523, 2505, 1504, 2602 and 2505 in total measuring Ac.0.83 decimals and 4 links in R.R. Case No.976 of 1963-64 and Misc. Case No.308 of 1961-62 in R.R. Case No.44 of 1974 referred to in the plaint with respect to the land under C.S. Plot Nos.1414 and 1415 is not available. They state that Mahadev Seva Sadan's house stands on the land under M.S. Plot No.2711. The entry in the remark column in M.S. R.O.R. No.2710 is said to be wrong.

4. The Defendants 4 and 5 stated that Muralidhar Jena got possession of Ac.0.04 decimals of land out of C.S. Plot No.1415 corresponding to M.S. Plot No.2710 from Ex-landlord under the unregistered lease deed. He constructed a thatched house over the land and named it as Muralidhar Trust Fund (Defendant No.5), a registered Society managing the Seva Sadan since 1947. The house of Agrawalla is said to be on Plot No.2711. They have denied the title and possession of the Plaintiff and alleged that the document, namely, Hata Patta and rent schedule, as relied upon by the Plaintiff, are all false and fabricated.

5. The Trial Court, on the above rival pleadings, having framed six issues, have found the unregistered lease deed (Ext.2), the rent receipts (Ext.3 series) and rent schedule (Ext.4) to be genuine. Having said so, the Trial Court has held the Plaintiff to be having the right, title, interest and possession over the suit land.

The suit being decreed, the Defendants 4 and 5 had carried the Appeal and they have been successful in getting the Plaintiff non-suited.

6. The Appeal has been admitted on 01.03.2006 to answer the substantial questions of law, as indicated in Ground Nos.9(A), (C) & (D) of the Memorandum of Appeal, which run as under:-

“A). Whether the learned lower appellate court has erred in law in not taking note of the admission of defendants 1 and 2 in their written statement that plaintiff has his house standing over plot no.2710 which has not been refuted by Defendant Nos.4 and 5, when admission is the best piece of evidence and requires no proof?;

C) Whether the title appeal abates not only against Nidhiram deceased Respondent No.1 but as a whole for non-substitution of the legal heirs of Debendra as indicated in

para-2 fo the grounds when Respondent No.1 Nidhiram died during pendency of the Title Appeal?; and

D) When Nidhiram was a tenant under the intermediary and was recognized as a tenant after vesting under section 8(i) of the O.E.A. Act, whether the learned lower appellate court has gone in construing as if the land was settled in favour of the plaintiff Nidhiram under section 6 & 7 of the O.E.A Act and accordingly disbelieved the same to deny plaintiff's title."

7. Learned counsel for the Appellants submitted that one of the legal representatives of the original Plaintiff, namely, Denendra Beuria having died during pendency of the First Appeal and his legal representatives having not been brought on record, the judgment and decree passed by the First Appellate Court cannot stand and as such vulnerable as the Appeal had by then abated in entirety. He next submitted that the First Appellate Court has completely gone wrong in not taking note of the admission of the Defendants 1 and 2 in their written statement that the Plaintiff has his house over Plot No.2710 and that on being appreciated in its proper perspective, the conclusion of the First Appellate Court is untenable. He submitted that the original Plaintiff (Nidhiram Beuria) ought to have been held to be a tenant under the Ex-intermediary and as such ought to have been held to have been so recognized after the vesting by virtue of the provisions of Orissa Estate Abolition Act, 1951 (for short, 'the OEA Act') and the First Appellate Court has gone wrong in holding against the claim of the Plaintiff. He, therefore, submitted that the First Appellate Court ought not to have repelled the claim of the Plaintiff as having the title over the property.

8. Learned counsel for the Respondents submitted all in favour of the findings returned by the First Appellate Court. He contended that the First Appellate Court has rightly taken the view that it is for the Plaintiff

to discharge the heavy burden lying on him in establishing his ownership and possession over the suit land. In that view of the matter, he having not examined himself and instead, his son having come to the witness box, in the absence of any explanation forthcoming from the side of the Plaintiff, the Trial Court has rightly taken an adverse view on the case of the Plaintiff. He further submitted that upon detail discussion of evidence on record and providing appropriate justification, the First Appellate Court, on reappraisal of the evidence at its level, is correct in holding that the Plaintiff has failed to establish his title and possession over the suit land.

9. Keeping in view the submission made, I have gone through the judgments passed by the Courts below.

10. In the case in hand, the original Plaintiff, namely, Nidhiram Beuria died during pendency of the First Appeal. By filing a death certificate it is now stated that one of his legal representatives, who had been brought on record, having died on 23.02.2003, his legal representatives have not been brought on record by way of substitution and, therefore, the judgment and decree passed in the Appeal are vulnerable as by then, the Appeal stood abated in entirety. It may be stated here that when the First Appeal came to be decided by judgment dated 27.01.2005, these Appellants, who were the Respondents therein, had never raised that question and they contested the Appeal for its disposal on merit. Even if accepting for a moment that said Respondent No.1(g) died during pendency of the First Appeal in presence of all other legal representatives of the original deceased-Plaintiff, namely, Nidhiram Beuria who are claiming the interest in common, the estate of Nidhiram being sufficiently represented, the judgment and decree

passed by the First Appellate Court, on that ground, cannot be said to be vulnerable.

11. The Plaintiff, having filed the suit, asserting his right, title and interest over the suit land as also possession, he himself has not come to the witness box to prove the plaint averments and it is his son who has been examined in the case as P.W.1. Except stating the age of the Plaintiff, he has offered no such other explanation. So, when the Plaintiff claims himself to have got the suit property on lease under an unregistered document, the best evidence from the lips of the Plaintiff, has been withheld not only on that score, but also on the factum of delivery of possession and its continuance thereof. Thus, the First Appellate Court, for the above reason, having drawn adverse inference on the case of the Plaintiff, as projected, this Court finds no reason to express any disagreement with the same.

That unregistered deed of lease (Hath Patta) is Ext.2. The First Appellate Court has examined the said document from different angles as its genuineness was under serious challenge. The Ex-landlord's signature when finds place on the right side top of that document, his signature is not there at the foot. The document reveals that description of the property is without any boundary and no such map has also been appended when no date is being placed under the signature of Ex-Zamindar. The rent receipts, without having the official seal, have been rightly disbelieved. After the vesting of the property in the State by virtue of operation of law, the Tahaildar had no power to settle the said land by initiating Miscellaneous Case as it seems to have been done. The evidence of the son of the Plaintiff having been scanned, the same has not been found to be acceptable to establish the claim of title and

possession of the Plaintiff over the suit land. This court finds absolutely no such infirmity with the above conclusions.

The substantial questions of law being accordingly answered, it is held that the Appeal is liable to be dismissed.

12. In the result, the Appeal sands dismissed. There shall, however, be no order as to cost.

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

Basu

