

IN THE HIGH COURT OF ORISSA AT CUTTACK

R.S.A. NO.551 OF 2014

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 Addl. District & Judge, Jeypore in RFA No.06 of 2013 by confirming the judgment and decree passed by the learned Civil Judge (Senior Division), Jeypore in Civil Suit No.07 of 2006.

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Shri Narayana Das (Since Dead)through his LRs & Others :::: *Appellants.*

-versus-

The State of Odisha & Others ... *Respondents.*

**Appeared in this case by Hybrid Arrangement
(virtual/physical mode)**

For Appellants :::: M/s. P.K. Rath, S.K. Behera,
B.K. Das, K. Kashyap,
R.N. Parija, A. Behera,
A.K. Rout, P.K. Sahoo,
S.K. Pattnaik, M.M. Rout,
S.K. Behera, B.K. Das,
S. Mohapatra, P.K. Basantia,
Advocates.

***For Respondents* :::** Ms. Samapika Mishra,
Addl. Standing Counsel.

CORAM:

MR. JUSTICE D.DAS

DATE OF HEARING:: 13.09.2022, DATE OF JUDGMENT::26.09.2022

D.Das, J. The Appellants in this Appeal filed under Section-100 of the Code of Civil Procedure 1908 (for short, 'the Code') have assailed the judgment and decree passed by the learned Addl. District Judge, Jeypore in RFA No.06 of 2013.

The First Appellate Court has thereby dismissed the Appeal filed by the present Appellants under Section-96 of the Code and thus, has confirmed the judgment and decree passed by the learned Civil Judge (Senior Division), Jeypore in Civil Suit No.07 of 2006.

Be it stated here that Shri Narayan Das, the predecessors in interest of these Appellant Nos. 1(a) to 1(g) with the predecessor-in-interest of Appellant Nos. 2(a) to 2(e) and the predecessor-in-interest of Appellant Nos. 3(a) to 3(c) as well as Appellant Nos. 4 and 5 having filed the suit for declaration of their right, title and interest over the suit land and permanent injunction restraining the Respondent Nos. 1 to 3 (Defendant Nos. 1 to 3) and the predecessor-in-interest of Respondent Nos. 4(a) to 4(n) from evicting them and interfering in peaceful possession over the suit land, the same stood dismissed. The First Appellate Court has refused to be interfered with the said judgment and decree passed by the Trial Court. That Plaintiff Nos. 1 and 2 having died during pendency of the suit, their legal representatives having come on record as the Plaintiffs prosecuted the suit and they too had filed the First Appeal. Thereafter they are now before this Court in the Second Appeal. The Plaintiff No.3 having died during pendency of this Appeal, his legal representatives have also joined as the Appellants and are before this Court as Appellants.

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. Plaintiffs case is that one Baidyaraj Nilakantha Das was the Inamdar of Inam village of Jeypore Estate and he was in possession of Inam land of mouza Hardoli with other Inam lands. After abolition of the Estate, the Settlement Authority taking note of khas possession of the portion of the said Inam land by that Baidyaraj Nilakantha Das, recorded the said land in his name. While doing so, they erroneously recorded the remaining land as BEDAKHALI PARITYAKTA RAYATA BHUMI. So, said Nilakantha Das approached the OEA Collector for correction of the record of right and for recording of the suit land in his name. The claim was not settled/ finalized during his lifetime. So, his wife and sons pursued the matter for settlement of the suit land in their names. However, before the proceeding could be finally disposed of, the Defendant No.3 (Tahasildar, Jeypore) initiated a proceeding under the Orissa Prevention of Land Encroachment Act (for short 'OPLE Act') 1972 vide OPLE Case No.2144 of 1984 against the son of Late Baidyaraj Nilakantha Das and passed an order of eviction against them holding that they are in possession of Ac.1.21 decimals of land by way of encroachment out of the suit land. Ac.3.82 decimals of the land under Plot No.158, which stood recorded in the

name of Sukuru Domb, the Plaintiffs are in possession of Ac.1.21 decimals of land and Sukuru Domb is in forcible possession of Ac.2.61 decimals of land. Since the Tahasildar did not settle the suit land in favour of the Plaintiffs and passed an order of eviction in OPLE Case No.2144 of 1984 without any reason and justification and that too illegally settling Ac.3.82 decimals of land in favour of Sukuru Domb, the present suit came to be filed.

4. The Defendant Nos. 1 to 3 in the written statement that they filed have submitted that the suit land, locally known as Baidyamunda and it was not the Inam land and as such the same was not in possession of the ancestors of the Plaintiffs, who had no right, title, interest and possession over the suit land. It is also the case of the Defendants that the lands which were in possession of Baidya Nilakantha Das were settled in his name, after vesting of Jeypore Estate vested with the State Government free from all encumbrances and out of the suit land Ac.3.82 decimals have been assigned to Sukru Domb under Khata No.57/3 and Plot No.158. Since the ancestors of Plaintiff Nos. 1 to 3 encroached upon a portion of the suit land of the Plaintiffs Encroachment Proceedings bearing No.01 of 1966 and 88 of 1966 had been initiated and eviction orders were passed against them. It is stated that the Defendant Nos. 1 to 3 being not party to the O.S. No.30 of 1940, the judgment and decree passed in the said suit is not

binding on them. The ROR prepared in the name of Defendant No.4 and the State Government having not been challenged by the Plaintiffs it is stated that the suit claim the reliefs on that score is not entertainable.

5. The Defendant No. 4 in his written statement has admitted that the land measuring Ac.3.82 decimals have been recorded in his name. He submitted that the said record of right having not been challenged, the suit is not maintainable and as such barred by law of limitation. The Defendant No.4 being not a party to the O.S. Case No.30 of 1940, it is stated that the judgment and decree passed therein are not binding on him. He further claims to be in possession of the land settled in his favour.

6. The unsuccessful Plaintiffs being aggrieved by the dismissal of the suit by the Trial Court having carried the First Appeal have been unsuccessful.

7. Learned Counsel for the Appellant submitted that overwhelming evidence on record being there on the score of possession of the property by the Plaintiffs, the Courts below are not right in holding the same in the negative, which is completely against the weight of evidence on record and as such the outcome of perverse appreciation of the same. He further submitted that finding the possession of the Plaintiffs in respect of the suit property even prior to the orders passed

in O.S. Case No.30 of 1940 in open and peaceful manner and that too continuously for the period as the owners of the properties exercising all such right to the knowledge of the Defendants, the Courts below ought not to have dismissed the suit in holding the Plaintiffs are not entitled to the reliefs of declaration of right, title and interest over the suit land in their favour. He further submitted that when the order passed in O.S. NO.30 of 1940 admitted in evidence and marked Ext.1 shows that let Baidyaraj Nilakantha Das as the Inamdar of mouza Hardoli for the suit land was in possession of the same and Ext.2 states the factum of delivery of possession of the suit land to him as also when Ext.3 speaks of khas possession of Ac.25.57 decimals of land by the said late Baidyaraj Nilakantha Das, when its continuity been proved through Exts. 4 to 7, the Courts below ought to have held that the Plaintiffs are possession as the owner of the said property. He further submitted that the possession of the Plaintiffs since have also been established through Exts. 15 to 18 for such a long length of time, the Courts below ought to have declared the right, title and interest of the Plaintiffs over the suit land as claimed by them by virtue of the provisions contained in sub-section-3 of section -8 of the Orissa Estate Abolition Act and the view taken that the Plaintiffs have not been challenged the rejection of their claim by ignoring the fact that they had pursued there, the remedy under the OEA Act in shape of Claim

Case No.25 of 1957, the judgments and decrees passed by the Courts below are vulnerable. He, therefore, urged for admission of this Appeal to answer the above as the substantial questions of law.

8. Learned Counsel for the State assisting the Court in the matter of admission hearing submits all in favour of the findings returned by the Courts below. According to her, all those findings are quite in consonance with the evidence on record as had been arrived at upon just and proper appreciation of the case. She submitted that the property in suit having been vested with the State free from all encumbrances and the ancestors of the Plaintiffs nor the Plaintiffs having been settled that those lands; merely saying that they are in continuous possession of the same and even accepting that physical possession, the suit seeking the reliefs as prayed for has been rightly dismissed.

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

10. The Plaintiffs have placed reliance on Ext.1, which is the order passed in Original Suit No.30 of 1940 filed by the Baidyaraj Nilakantha Das and Chandra Domb of Jeypore and Umuri respectively against Baidyaraj Lingaraj Das of Jeypore and Keshaba Gadaba of Chhotadeipur. The Principal Agency, Munsif, Jeypore had decreed the suit and order for eviction of the Defendants with further

direction for delivery of the suit land to Baidyaraj Nilakantha Das had been passed. The First Appellate Court at the right stage appears to have gone to verify the land particulars as indicated therein with the particulars of land and area shown in the plaint. The suit has been filed for agricultural land extending to Ac.9.11 cents under Khata No.43 of mouza Hardoli and Ac.1.00 cents of Gramakantha land of village Hardoli. The boundaries given in the Schedule of the plaint being stated, it has been found that the said Ext.1 had no reference of any survey number or patta number of Baidyamunda, and it is not shown as to which land have been delivered to Baidyaraj Nilakantha Das. The land schedule in Ext.2 being gone through with the boundaries as it stated, the First Appellate Court is found to be right in saying that the documents are not clinching enough to show that possession of which lands had been ordered to be delivered to Baidyaraj Nilakantha Das when even the boundaries do not tallies with the boundaries of the land given in the plaint. In such state of affairs in the evidence let in by the Plaintiffs, no infirmity is noticed with the view taken by the Courts below that the Plaintiffs have failed to establish that as per the Exts. 1 & 2, Nilakantha got delivery of possession of the suit land.

The First Appellate Court thereafter has gone to peruse Ext.3, where also there is no reference of plot number and khata number as given in the schedule of the plaint. The documents Exts. 5 & 6 have

been found to be self contradictory and the reasons for the same have been very clearly assigned which being carefully read no fault is found. The report of the Revenue Supervisor is to the effect that the Baidyaraj Nilakantha Das and his family members are in long possession of Ac.2.61 decimals of land which has been leased out to Sukuru Domb, but Ext. 6 then contradicts the same. The Plaintiffs were found to be in possession of the suit land except that Ac.2.61 decimals which was assigned in favour of the Defendant No.4.

11. It is the case of the Plaintiff that Baidyaraj Nilakantha Das was the Imandar of village Haradoli, but there is no documents in relating to appointment of said Baidyaraj Nilakantha Das as Imandar in respect of the suit land and payment of rent by him to the Ex-Ruler for those lands. The Inam land vested with the State as on abolition of the estate. When there is no document in favour of Baidyaraj Nilakantha Das as aforesaid, no conclusion as to his khas possession of the suit land prior to the vesting as Inamdar can be arrived at which has been rightly said by the First Appellate Court. Here the Plaintiffs state that they have been settled that land of Ac.12.85 decimals and it was in favour of Baidyaraj Nilakantha Das followed by issuance of ROR in his name. This has not been challenged and thus for claiming recording of rest land in his name, the period of limitation has expired since long and the suit land has come to be recorded in the name of the State with the

status PARITYAKTA BEDAKHALA RAYAT BHUMI land as well as Parambhoke as can be seen from the Ext.A-1 and B-1. From the land covered under Ext. A-1, Ac.3.82 cents have been assigned to Defendant No.4. In view of the above the recording of the suit land in favour of State certainly gives rise to a presumption of title and possession after resting. This presumption has not been dislodged by clear, cogent and acceptable evidence.

In view of all these, the Plaintiffs are rightly found to have not established their title over the suit land and under the circumstances, mere possession of the Plaintiffs over the suit land even if on their own showing is accepted does not come to their aid to declare their title over the suit land and grant the consequential reliefs have been prayed for.

For all these above, this Court is not in a position to accept the submission of the learned Counsel for the Appellants that this Appeal merits acceptance to answer any substantial question of law.

12. In the result, the Appeal stands dismissed. No order as to cost.

**(D. Das),
Judge.**