

IN THE HIGH COURT OF ORISSA AT CUTTACK

RSA No.164 of 2011

In the matter of appeal under Section 100 of the Code of Civil Procedure assailing the judgment and decree dated 29.01.2011 and 18.02.2011 respectively passed by the learned Adhoc Additional District Judge (FTC), Balangir at Patnagarh in RFA No.116 of 2007 confirming the judgment and decree passed by the learned Civil Judge, Senior Division, Patnagarh in Title Suit No.65 of 2002.

Niranjan Sa

....

Appellant

-versus-

Jayanti Sa & Others

....

Respondents

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

<i>For Appellant</i>	-	M/s.N.C. Pati, A.K. Das & B.Das (Advocates)
<i>For Respondents</i>	-	Mr.S.P.Mishra, Sr. Advocate

CORAM:

MR. JUSTICE D.DASH

Date of Hearing : 18.07.2022 : Date of Judgment:25.07.2022

D.Dash,J. The Appellant, by filing this Appeal, under Section-100 of the Code of Civil Procedure, 1908 (for short, 'the Code'), has assailed judgment and decree dated 29.01.2011 and 18.02.2011 respectively passed by the learned Adhoc Additional District Judge (FTC), Balangir at Patnagarh in RFA No.116 of 2007.

By the same, the Appeal filed by the present Appellant, being the unsuccessful Plaintiff, under section 96 of the Code has been dismissed and thereby the judgment and decree passed by the learned Civil Judge,

Senior Division, Patnagarh in Title Suit No.65 of 2002 dismissing the suit filed by the present Appellant as the Plaintiff against the Respondents arraigning them as the Defendants therein, have been confirmed.

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 Plaintiffs' case is that one Ganda Sa had three sons, namely, Parameswar, Alekh and Gobardhan. The Plaintiff is the son of Gobardhan. Alekh being alive, has been arraigned as Defendant No.2. The Defendant No.1 is the wife of Alekh and Defendant No.3 is the daughter of Alekh.

It is stated that till the death of Parameswar, all the three brothers were living in joint mess and estate. Parameswar having died, his widow (Defendant No.1) remarried Alekh (Defendant No.2). Gobardhan expressed his intention for partition of the suit holding, which earlier stood recorded in the name of Parameswar alone. It is stated that the suit land is the joint family property of the brothers although recorded in the name of Parameswar alone and all the three brothers, i.e., sons of Ganda were in joint possession and the enjoyment of the same. It is further stated that in the 1976 settlement, the land stood recorded in favour of Alekh (Defendant No.2), Gobardhan and Betikhai (Defendant No.1). In a partition during the year 1970-71 between Gobardhan and Alekh, the suit land extending to Ac.6.18½ decimals in khata no.67 is said to have fallen to Gobardhan's share and it remained in his possession. Pursuant to the said partition and possession, the Plaintiff in the year 2001 when asked for separate recording of the land in his name, the same was resisted by the Defendants. So, the suit came to be filed.

4. The Defendants 1 and 3, in their written statement, submitted that the suit land never belonged to the joint family consisting of three brothers. They said that it is the self-acquired property of Parameswar, who had separated from his brothers and was in exclusive enjoyment of his properties. After his death, Defendant No.1 succeeded to the said property and possessed the same being the only legal heir and successor of Parameswar. It is stated that taking advantage of the dependency of Defendant No.1, the land has been recorded jointly in the Record of Right of 1976 Settlement. The Plaintiff is thus stated to be having no interest over the said land which had never been partitioned as there was no occasion for the same.

The Defendant No.2, filing the written statement, did not contest the suit and has been set ex parte.

5. On the above rival pleadings, the Trial Court framed as many as six issues. Answering the crucial issues, i.e., issue nos.2 to 4 together as those concern with the nature of property; if the same was partitioned and had fallen to the share of Gobardhan and subsequently the right of the Plaintiff over the same; upon examination of the evidence and their evaluation, the answer has been recorded that the property in the suit is not the ancestral joint family properties of the parties and it is the property of Parameswar alone. It has also been said that there was no partition of the property and that had never fallen to the share of the Plaintiff and he has no right, title and interest over the same for being so declared as has been prayed in the suit.

The Plaintiff, being unsuccessful in the suit, having carried the Appeal, has failed in that move.

6. The Appeal has been admitted on 23.02.2012 to answer the following substantial questions of law:-

“A. Whether the courts below committed serious illegality in excluding Ext.1, i.e., the Zamabandi Khata No.18 of 1916 which corresponds to Khata No.39 of 1936 settlement on the ground of absence of pleading even though there is clear pleading that the suit property is the ancestral joint family property?;

B. Whether in absence of any pleading or evidence as to what was the basis of recording the name of Purusottam in 1936 ROR which has been successfully rebutted by ROR of 1916 and the current M.S ROR coupled with the other oral evidence on record, the courts below acted illegally in holding that Purusottam was the exclusive owner of the suit property?; and

C. Whether the Courts below applying the principle that when both parties adduced evidence knowing the case of each other, burden of proof losses its significance, should have held that the defendants have miserably failed to prove that the suit properties were exclusive properties of late Purusottam?”

7. Mr.B.Das, learned counsel for the Appellant submitted that the Courts below, on the basis of the evidence both oral and documentary, ought to have arrived at a conclusion that the suit property is the ancestral joint family property and simply relying upon the record of right of the year 1936, the conclusion that the property is of Purushottam is wholly erroneous. He further submitted that the evidence on record, being scanned, it ought to be held that the suit property had fallen to the share of the Plaintiff and thus he is the exclusive owner in possession of the same.

8. Mr.S.P. Mishra, learned Senior Counsel for the Respondents submitted that the Trial Court as well as the First Appellate Court have rightly answered the issue nos.2 to 4 together in saying that the property being the property of Parameswar alone, on his death, Defendant No.1 (widow of Parameswar) has succeeded to the same and as such, others

have no right over the suit property. He submitted that upon examination of the evidence and their assessment, the Courts below are wholly right in holding that the Plaintiff's suit for declaration of title and possession over the suit property, has to fail.

9. Admitted facts stand that Ganda Sa had three sons, namely, Parameswar, Alekh and Gobardhan and that Defendant No.1 is the legally married wife Parameswar and on his death, she remained the Defendant No.2. The suit land stands recorded in the name of Defendant Nos.1 to 2 and Gobardhan, the father of the Plaintiff in the record of right of the year 1976 as is reflected in Ext.B = Ext.3. In the Record of Right of 1936 settlement, this land, however, stood recorded in the name of Parameswar alone under Khata No.39, which can be seen from Ext.A = Ext.2. When it is stated by the Plaintiff that it was the ancestral joint family property, the contesting Defendants contend that it is the property of Parameswar alone. In support of the same, the Plaintiff has proved Ext.1, the Record of Right of the year 1916 and it is said that the land being recorded in the name of Tika Sa, the father of Ganda Sa; the Record of Right of the year 1936 had been erroneously prepared. The Trial Court has discarded this Ext.1 from being taken into consideration as the Plaintiff nowhere has pleaded that Tika Sa is the father of Ganda Sa nor it has been stated that this land recorded in the year 1916 was in the name of his great grandfather. In view of that, on this crucial issue, the Courts below having not taken into account Ext.1 for the purpose as projected by the Plaintiff being not backed by any pleading; this Court finds no such illegality therein. In that view of the matter, taking the Record of Right of 1936 into account and finding the recording in the Record of Right 1976 to be erroneous, the Courts below, in my considered view have rightly arrived at a conclusion that it is not the

ancestral joint family properties of the parties but the properties of Parameswar alone. The Plaintiff having failed to prove as to how the properties of Parameswar recorded in the 1936 Settlement, has come to be recorded in their names, his specific case that there has been a partition and in that partition, the suit land had fallen to his share are found to have been rightly disbelieved as having no foundation. The properties, being the properties of Parameswar, on his death, the Defendant No.1 being his wife, the class-I heir under the Hindu Succession Act, 1956 with which the parties are governed, has succeeded to the same to the exclusion of all other members of the family and by her remarriage with Defendant No.2 as per the settled position of law, she cannot be held to have been divested of the same.

The aforesaid discussion and reasons thus provide the answer to the substantial questions of law against the case/claim of the Plaintiff. The suit as laid and for the reliefs claimed is thus found to have rightly been dismissed the Courts below.

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

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

Basu