

IN THE HIGH COURT OF ORISSA AT CUTTACK

RSA No.470 of 2012

In the matter of appeal under Section-100 of the Code of Civil Procedure assailing the judgment and decree dated 24.11.2012 and 06.12.2012 respectively passed by the learned Additional District Judge, Dharamgarh in RFA No.35/84 of 2011 confirming the judgment dated 21.07.2011 passed by the learned Civil Judge, Senior Division, Dharamgarh in Civil Suit No.51 of 2008.

Shyama Naik

....

Appellant

-versus-

Krushna Mohan Naik & Another

....

Respondents

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

For Appellant

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M/s.A.K. Tripathy, P.Kar and
S.Mohanty
(Advocates)

For Respondents

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Mr.B.Das & B.K.Swain
(Advocates for R.1,2,4 to 7)
Mr.S.K.Biswal
(Advocate for R.8)

CORAM:

MR. JUSTICE D.DASH

Date of Hearing : 24.06.2022 : Date of Judgment:04.07.2022

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 the judgment and decree dated 24.11.2012 and 06.12.2012 respectively passed by the learned Additional District Judge, Dharamgarh in RFA No.35/84 of 2011.

By the same, the Appeal filed by the present Appellant (Plaintiff) under section 96 of the Code has been dismissed and thereby the judgment dated 21.07.2011 passed by the learned Civil Judge, Senior Division, Dharamgarh in Civil Suit No.51 of 2008 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 Plaintiff's case is that the suit land originally stood recorded in the name of his father, namely, Kerketa Domb in Khunti No.11 of 1922-23 settlement, which corresponds to the land under Khata No.64 of 1955-56 settlement. It is stated that the said land is the self-acquired property of Kerketa. The Plaintiff and Defendant No.8 are the sons of said Kerketa. Defendant Nos.1 to 3 are the daughters of Gaja and granddaughters of Rabi. Dhawja's daughters are Defendant Nos.4 to 7 and they are the granddaughters of Dhanurdhar. The Defendant Nos.1 to 7 are stated to be not the legal heirs of Kerketa.

It is their further case that Kerketa died in the year 1952 and taking advantage of that, the grandfather of Defendant Nos.1 to 7, namely, Rabi and Dhanurdhar managed to record their names in the record of right concerning the suit land in the year 1955-56 settlement along with Plaintiff and Defendant No.8. In the year 1959, the grandfather of Defendant Nos.1 to 7 got the record of right corrected behind the back of the Plaintiff and the Defendant No.8. Thereby, they created separate Khatas vide Khata No.68/12 and 68/11 respectively shown in Schedule-C & D. During settlement operation, the Plaintiff could only know about the said recording of the suit land in the name of the ancestors of Defendants 1 to 7. It is stated that the Defendant Nos.1

to 7 nor their ancestor have any sort of right over the suit land and they are strangers to the suit land. They have also no right, title and interest over Schedule-C and D land since they are not the legal heirs of last recorded tenant (Kerketa). They are stated to have never possessed the suit land. So, the Plaintiff and Defendant No.8 have prayed to declare their right, title and interest over Schedule-A land of which Schedule-B, C and D lands are part. They have also prayed for correction of the record of right of khata no.64, 68/11, 68/12 and 68/132 in their favour.

4. The Defendant Nos.1, 2, 4 to 7, filing their written statement, have stated that Kerketa was not the record holder of the suit land. They state that Krushna and Niran are the sons of Gaja and Defendant Nos.1 to 7 are not the legal heirs of Kerketa. It is stated that Defendants 1 to 3 are the descendants of Padalal, Rabi and Gaja. Defendant Nos.4 to 7 are the descendants of Padalal, Dhanurdhar and Dhawaja.

It is their case that the suit land is the joint family property of the Plaintiff and Defendants and it is not the self-acquired property of Kerketa. They claim that the land of Khunti No.11 of 1922-23 settlement do not correspond to the land under khata no.64 of 1955-56 settlement. In 1955-56 settlement, the Settlement Authorities found the Plaintiff and Defendant no.8, Rabi and Dhawaja possessing the portion of the suit land covered under Khata no.64. So, the separate notes of possession in their favour in the remarks column of the record of right have been ordered. In the year 1959, Rabi and Dhawaja applied before the Tahasildar for separate recording of the land in accordance with their notes of possession. In Mutation Case No.2168 of 1959, the record of right Khata no.68/11 was created in the name of Dhawaja. After his death, his legal heirs, namely, Jema and Laxmi (wife of Dhawaja) and Defendant Nos.4 to 7 applied for substitution of their names in the

record of right in place of their ancestor Dhawaja. That was allowed on 21.12.1981 in Mutation Case No.2510 of 1981. It is stated that accordingly record of right of Khata no.68/11 was made in the name of Jema, Laxmi and Defendant Nos.4 to 7. It is further stated that Rabi applied for separate recording of the land as per the note of possession and khas possession reflected in his favour in the ROR of khata no.64 of 1955-56 settlement. As per the order passed in Mutation Case No.2169 of 1959, separate khata bearing no.68 of 2012 was created in the name of Dhawaja Naik.

It is further stated that the Plaintiff has concealed in the plaint about recording of the notes of possession in favour of the branch of Dhawaja and Rabi in khata no.64 of 1955-56. The Plaintiff and Defendant No.8 are stated to be having full knowledge regarding the joint recording of the suit land in khata no.64 of 1955-56 settlement and also about the recording of the lands separately in the name of Dhawaja and Rabi in the year 1959.

The maintainability of the suit is also under challenge on the ground of limitation.

5. On the above rival pleadings, the Trial Court framed as many as nineteen issues and upon examination of evidence and their evaluation, has answered those against the Plaintiff and the suit having been dismissed by the Trial Court, the unsuccessful Plaintiff had carried the First appeal under section 96 of the code, which too has been dismissed.

6. This Appeal has been admitted on 26.03.2015 to answer the following substantial question of law:-

“(A) Whether the Courts below are justified in holding the suit to be barred, being hit under section 42 of the Orissa

Survey Settlement Act for not challenging the record of right within the time stipulated therein?

7. Learned counsel for the Appellant submitted that on the face of the finding of the Courts below on issue nos.6, 11 and 15 that the father of the Plaintiff and Defendant No.8 was the recorded tenant and that the suit property is the ancestral property of both sides, Plaintiff's suit ought not to have been dismissed in entirety and the Plaintiff ought not to have been non-suited.

8. Learned Counsel for the Respondents, on the other hand, supported the findings of the Courts below. It was submitted that on going through the evidence on record and upon their elaborate examination, the Courts below have rightly non-suited the Plaintiff. According to him, the Courts below, upon extensive examination of evidence, have rightly held that the Plaintiff and Defendant No.8 have failed to establish that the suit land is their ancestral property, which had been acquired by Kerketa himself.

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

10. It appears that on the basis of the possession of the recorded tenant, the record of right have been prepared in the year 1955-56 settlement. The same has not been challenged more particularly on the score of inclusion of names of Rabi and Dhawaja. The suit has been filed in the year 2008. Although it is stated that Plaintiff and Defendant No.8 were minors at the time of preparation of record of right in the 1955-56 settlement but thereafter when they attained majority, it appears that they have maintained complete silence over the matter. These records of right thus have been allowed to stand from that year 1955-56 onwards

for more than five decades. The parties have worked out their rights basing upon those records of rights prevailing over a such a long period of more than five decades.

11. At this stage, before proceeding further, the application under Order 41 Rule 27 of the Code comes for consideration. By filing this application, the Appellants seek to leave to lead settlement village map of 1947-48 as additional evidence.

Having heard the learned Counsel for the parties and careful reading being given to the judgments passed by the Courts below; this Court finds that at this stage no such useful purpose at all would be served by bringing this old settlement village map in evidence in order to search out the answer to the substantial question of law standing to be answered.

Therefore, the Interim Application filed by the Appellants (I.A. No.112 of 2019) stands dismissed.

In that view of the matter, furthermore with the evidence as regards the dealings of the properties by the parties stretching over such a long period of more than five decades, the Courts below are found to have not committed any error in upholding those records of right and whittling down, the challenge to the same advanced by the Plaintiff in the year 2008. The Courts below are, therefore, right in dismissing the suit filed by the Plaintiff claiming the reliefs, as advanced therein.

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

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