

**IN THE HIGH COURT OF ORISSA AT CUTTACK**

**W.P.(C) No. 3353 of 2012**

***Kishore Ray Thakur and others*** .... ***Petitioners***  
Mr. Maheswar Mohanty, Advocate

*-versus-*

***Ajoy Kumar Pattnaik and others*** .... ***Opp. Parties***  
Mr. P.C. Acharya, Advocate  
(For Opposite Party Nos. 4 to 7)

**CORAM:**  
**JUSTICE K.R. MOHAPATRA**

**ORDER**  
**09.12.2022**

**Order No.**

11. 1. This matter is taken up through Hybrid mode.
2. Petitioners in this writ petition seek to assail the order dated 8<sup>th</sup> February, 2012 (Annexure-4) passed by learned Civil Judge (Senior Division), Jaleswar in CS No.8 of 2010, whereby an application filed by the Plaintiff Nos.1 to 3 /Petitioner Nos.1 to 3 to accept certain documents as per the list appended to said petition, has been rejected.
3. Mr. Mohanty, learned counsel for the Petitioners submits that Plaintiffs filed the suit for declaration of their right, title and possession over the suit land and that the Defendants have no semblance of right or title or interest or possession over the same. It was further prayed for declaring the two sale deeds dated 28<sup>th</sup> January, 1987 by Narendranath Dey in favour of Defendant Nos.4 to 7 in respect of a part of the said plot as void. He further prayed to declare the sale deed No.2264 dated 29<sup>th</sup> April, 1940 and Bebondabasta Patta No.2271 dated 30<sup>th</sup> April, 1940 to be invalid and fraudulent along with other consequential and ancillary reliefs.

3.1 It is the case of the Plaintiffs that the land in question was gifted to the Plaintiff Nos. 1 to 3 vide registered gift deed dated 2<sup>nd</sup> July, 1959. By virtue of such gift, Plaintiffs are in possession over the same. Land under the gift deed pertains to Sabik suit Plot No.81 under CS Khata No.69, which corresponds to Hal Plot No.105 under Hal Khata No.25 situated in mouza Ghidapata. Along with aforesaid plots few other plots were also gifted under the said gift deed. Although a copy of the MS ROR of Khata No.25 was produced at the time of filing of the plaint, but certified copy could not be obtained at the relevant time. However, after closure of the evidence, Plaintiffs filed an application to accept certain documents on their behalf and another petition seeking leave to adduce evidence to that effect. Learned trial Court, holding that there is no pleading in the plaint with regard to land measuring Ac.0.83 decimals of Sabik Khata No.69, Sabik Plot No.81 of Sabik Sikim Khata No.2 of registered gift deed dated 2<sup>nd</sup> July, 1959, rejected the same. Learned trial Court also rejected the prayer with regard to accepting certain documents.

3.2 Mr. Mohanty, learned counsel submits that the Petitioners in this writ petition are confining their prayer with regard to MS Khata No.25 as well as plot index of the said Khata only. It is his submission that description of the land has been made under the Schedule of the plaint. Thus, the finding to the effect that there was no pleading as aforesaid, is not correct. At para-11 of the plaint, it has also been stated that major settlement ROR in respect of Plot No.105 to an extent of Ac.0.82 decimals was published on 29<sup>th</sup> January, 1988. Thus, a conjoint reading of para-11 along with other pleadings and the

Schedule of the plaint clearly establish that the major settlement Khata No.25 correlates to the land covered under the gift deed in question. This aspect was not considered by the learned trial Court at the time of adjudication. Hence, the impugned order is liable to be set aside.

4. Mr. Acharya, learned counsel for the contesting Opposite Parties 4 to 7 submits that although MS ROR was filed along with the plaint, but no reason is assigned by the Plaintiffs as to why they did not exhibit the same at the time of examination of their witnesses. Thus, a petition to accept such documents at a belated stage, more particularly after closure of the evidence of the parties, is nothing but to patch up the lacunae on behalf of the Plaintiffs/Petitioners. It is also submitted that the Plaintiffs have also not led any evidence in that regard. Hence, the impugned order warrants no interference.

5. Considering the rival contentions of the parties and on perusal of record, more particularly the impugned order, it appears that mention about the MS Khata No.25 finds place in the plaint. Further, the co-relation of Sabik and Hal Khata numbers has been given in the Schedule of the plaint. It is contended that said plot under MS Khata No.25 along with other plots were given to the Plaintiffs 1 to 3 vide registered gift deed dated 2<sup>nd</sup> July, 1959. It is also submitted by Mr. Mohanty, learned counsel for the Petitioners that the Petitioners confine their prayer for exhibiting MS ROR No.25 and plot index of the said Khata only. Plaintiffs/Petitioners do not press for accepting other documents appended to the petition under Annexure-1 series. On reading of the plaint, which has been filed at the time

of hearing of the writ petition and on consideration of submission by learned counsel for the parties, it appears that mention with regard to MS Khata No.25 correlating to Sabik Khata No.69 is available in the plaint. It also appears that the registered gift deed has been marked as Ext.10 and the Sabik Khata No.69 has been marked as Ext.1/D. Thus, finding of learned trial Court to that effect is not sustainable. The prejudice, if any, caused to the Defendants may be compensated by cost more particularly when MS Khata No.25 is a relevant document to consider case of the Plaintiffs and is relevant for proper adjudication of the suit. Accordingly, the impugned order under Annexure-4 to that extent is set aside and the matter is remitted back to learned trial Court to examine as to whether liberty should be granted to exhibit certified copy of MS ROR No.25 and certified copy of corresponding plot index by affording opportunity of hearing to the parties concerned.

6. Since the suit is of the year 2006, expeditious steps should be taken for consideration of application of Petitioners in the light of the observation made above and thereafter proceed with the suit.

7. The writ petition is allowed to the aforesaid extent.

Issue urgent certified copy of the order on proper application.

**(K.R. Mohapatra)**  
**Judge**