

IN THE HIGH COURT OF ORISSA AT CUTTACK

R.S.A. No.447 of 2012

In the matter of an appeal under section 100 of the Code of Civil Procedure assailing the judgment and decree passed by the learned District Judge, Kendrapara in R.F.A. No.37 of 2010 setting aside the judgment and decree passed by the learned Civil Judge, Junior Division, Pattamundei in T.S. No.191 of 1997.

Paramananda Behera & Others* *Appellants

-versus-

Pandab Ch. Naik & Others* *Respondents

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

***For Appellants* - Mrs.Sumitra Mohanty
(Advocates)**

***For Respondents* - Sri S.S.K. Nayak
Advocate for R.1**

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

Date of Hearing : 26.08.2022 : Date of Judgment:20.10.2022

The Appellants by filing this appeal under Section 100 of the Code of Civil Procedure (for short called as the 'Code') have assailed the judgment and decree passed by the learned District Judge, Kendrapada in RFA No. 37 of 2010.

By the same, the appeal filed by the Respondent No.1, being the aggrieved Defendant No.4 in Title Suit No.191 of 1997 of the Court of learned Civil Judge, Junior Division, Pattamundei under Section 96 of the Code has been allowed and thereby, the judgment and decree passed by the Trial Court in decreeing the suit filed by the Appellants

as the Plaintiffs have been set aside. The Trial Court has declared the suit land to be the communal land of villagers of the village Sangrampur and holding that the Respondent Nos.1 and 2 (Defendant Nos.4 and 5) have no right, title and interest over the same and injuncting them from interfering with the user of the suit land by the villagers of Sangrampur for communal purpose, has been set aside. The Appellants (Plaintiffs) have thus now been non-suited are in this Second Appeal before this Court.

2. For the sake of convenience, to avoid confusion and bring in clarity, the parties hereinafter have been referred to as per the position assigned to them in the Trial Court.

3. The Plaintiffs' case is that the suit plot measuring Ac.1.38 decimal stood recorded in the name of ex-landlord Raja of Kanika in current settlement Record of Right of 1930 and the suit plot is a part of that plot measuring Acre 0.35 decimal which corresponds to the new plot No. 338/555. It is stated that the suit land was being used by the villagers of Sangrampur as the grazing for the ground of cattles. The villagers have constructed a road adjoining the suit land. During the Hal settlement operation, it is stated that the Defendant Nos.4 and 5 and their father have somehow managed to record note of illegal possession of Dayanidhi Naik, the father of Defendant Nos.4 and 5 in respect of that suit land, when they have no such right, title, interest and possession over the same at any point of time. This noting in the Hal ROR is attacked as wrong. It is further stated that the temple of the village Deity is situated near the suit land. So, the villagers have been observing festivals on different festive occasions over that suit land. The festivals are Durga Puja, Jagara, Jutia, Dola, Ashoka Astami etc.

The Defendant No.4 claims to have filed a revision case bearing R.P. Case No.15605 of 1992 before the Board of Revenue for correction of the Record of Right. The revision, being heard, the matter has been remanded to the Tahasildar, Kanika for disposal in accordance with law. The Tahasildar had made a spot visit on 28.10.1999 in presence of the parties and has submitted the report about the user of the suit land as the grazing land of the cattles of the villagers. However, based on such recording of possession of the suit land when the Defendant No.4 openly gave out that he would be using the suit land hence forth and obstruct the villagers from using as before, the suit has come to be filed.

4. The Defendant No.4 contested the suit by filing the written statement. Raising various technical objections to the maintainability of the suit, it has been pleaded that the villagers of Sangrampur have never used the suit land at any point of time as the grazing ground for the cattles. It is also stated that the village road runs over plot no.417 and the villagers are using the same since long. It is stated that the suit plot is never used as path way by villagers. It is also stated that the Hal and Sabik Map of the village do not disclose the existence of Gochar land and path way over the suit land. The land under Sabik plot No.242 of measuring Acre 1.38 decimal under Sabik Khata No.74 of which the suit land is a part and it was Anabadi whereas the Kisam was Puratan Patita, which stood recorded in the name of Raja Rajendra Narayan Bhanjadeo in the current settlement record of the year 1940. The father of the Defendant No.4 having applied to the ex-landlord to lease out some land in his favour, the land measuring 0.35 decimal out of Acre 1.38 decimal was given on lease to him. Accordingly the said land had been mutated by the ex-landlord by mutation case no. 7/5 of 1947 and 1948 and mutation Khata was issued in his favour. Dayanidhi was

paying rent to the ex-landlord in that way. After vesting of the property with the State free from all encumbrances in view of the coming into force of Odisha Estate of Abolition Act, Dayanidhi paid rent to the State and his name was entered in the tenancy ledger maintained by the Revenue of Inspector Jayanagar Circle and Ayatan Circle. The name of Dayanidhi has been shown in the Jamanbandi register maintained by Tahasildar, Kanika.

It is stated that during life time of Dayanidhi because of dissention amongst the members of the family that property was amicably partitioned with other ancestral and self-acquired properties of Dayanidhi amongst them and the Defendant No. 4 is stated to have got the suit land in his share which has been reduced into writing on 05.07.1978. It is stated that he is possessing the suit land peacefully since then by using it as thrashing floor on some portion and growing seasonable vegetables as also staking the straws etc on the rest area. He further states that his father Dayanidhi had sold Acre in 0.03 decimal and 5 Kadi of land to Basanti Nayak by registered sale deed dated 08.11.1978 and accordingly, the Record of Right has been prepared in his name. Tahasildar, Kanika leased out Acre 0.04 decimal of land to Gayadhar Behera out of Sabik suit plot and Khatian has been issued in his favour. It is further stated that Gayadhar sold the suit land to Madhusudan, Panchanan, Niranjana and Yudhistira through registered sale deeds and since then they are in possession of their respective purchased land. After amicable settlement, Defendant No.4 applied before the Tahasildar, Kanika to demarcate the suit land, for which demarcation case no. 224 of 1980 was registered and it was so demarcated. During Hal settlement operation although Defendant no.4 produced all such documents before the Authority, they instead of

recording the suit land in his name recorded it as under Rakhit Khata with a note of possession in respect of the suit land in favour of father of the Defendant No. 4. The Defendant No. 4 then having come to know of the wrong recording filed Revision Petition No. 15605 of 1992 which is now pending before the Tahasildar after remand.

5. On the above rival pleadings, the Trial Court framed in total eight issues. Answering crucial issues no. VI and VII which concern with the nature of the suit land as asserted by the Plaintiffs to be communal and the right, title, interest and possession over the suit land as claimed by the parties, the Trial Court upon examination of evidence and their evaluation has recorded the answer in favour of the Plaintiffs. The said answer practically has resulted in passing the decree in suit in favour of the Plaintiffs by the Trial Court.

6. The Defendant No. 4 being aggrieved by the said judgment and decree passed by the Trial Court, having carried the First Appeal, has been successful in getting those set aside.

7. The appeal has been admitted to answer the following substantial question of law:-

“Whether the conclusion of the Lower Appellate Court that the suit land is not communal nature suffers from non-consideration of materials on record including Ext.5?”

8. Mr. R.K. Mohanty, learned Senior counsel for the Appellants submitted that this finding of the Trial Court returned on detail discussion of evidence on record has been unreasonably set aside by the First Appellate Court without assigning any such good reason. He further submitted that when the matter is still pending before the Tahasildar for verification as regards the settlement made in the name of

the father of the Defendant No. 4 upon examination and with reference to the relevant records and thereby to decide the claim of the Defendant No.4 for recording the suit land which has been recorded in the Government Khata in the Hal settlement operation, the First Appellate Court ought not to have dismissed the suit in entirety. According to him finally that order of the Tahasildar and other higher forums if so approached when would prevail in respect of the right, title, interest over the suit land is concerned as claimed by the Defendant No.4, till such time with the available overwhelming evidence on record on the score that the suit land is being used by the villagers of Sangrampur, as the grazing field for the village cattles which has also been noticed by the Tahasildar during his spot visit in presence of the parties, the Defendant No. 4 ought to have been enjoined from not interfering with such user of the suit land till the decision by the Tahasildar in that Revision Petition.

9. Mr. S.K. Nayak, the, the Respondent No.1 submitted all in favour of the findings returned by the First Appellate Court. According to him Dayanidhi Naik has acquired tenancy right over the suit land. It was submitted that ex-landlord Raja Kanika granted lease to the father of the Defendant No. 4 and then has mutated his name in the official record vide Ext. A and Dayanidhi went on paying rent which after vesting has been recognized by entry in different register. He therefore submitted that the lease granted in favour of Dayanidhi by ex-intermediary remained unaffected after vesting of the Estate under Section 8(1) of the O.A. Act which is a deemed provision and no further inquiry is contemplated. He thus, submitted that the First Appellate Court is right in dismissing the suit holding that the ROR does not create any right, title or interest nor extinguishes the same over the land.

He submitted that the Trial Court having given unnecessary importance to the Hal Record of Right, the First Appellate Court on consideration of evidence on record has rightly differed with the same in holding that the Plaintiffs have failed to prove their case on the face of the record relating to the land as proved by the Defendant No.4.

10. Keeping in view the submissions made, I have carefully read the judgments passed by the Courts below. I have also gone through the plaint and written statement. The evidence both oral and documentary have been extensively travelled through.

11. Admittedly, in the Hal Record of Right, the suit land stands recorded in the name of the State under Rakhit Khata insofar as the suit plot is concerned. There is however the note of possession in favour of the father of the Defendant No. 4. It is the case of the Defendant No.4 that in a family partition, he got the suit land in his share in the year 1978 but then the Hal Settlement record published much later in the year 1989 does not reflect that. During this period, the Defendant No. 4 has not taken any step to get the suit land recorded in his name and when said settlement operation began, in the said record, the possession of Defendant No.4 has not been found out and noted but it has been noted in favour of the father of Defendant No.4 which makes no sense and meaning when it is also not stated by the Defendant No.4 that his father Dayanidhi was living at that point of time. The Defendant No.4 has preferred the revision only in the year 1992 which on being remanded by the Commissioner is still sub-judice. In the meantime, the Tahasildar had made a spot visit and as per his report Ext. 5, the suit land is being used as grazing ground for the cattles of the villagers and this is of communal nature. The note runs as under :-

12. I have also visited the spot on 28.10.1999 with Amin P. Mallick in presence of both parties and found that the Hal Plot No. 388/555 Ac. 0.35 Kisam patit is a vacant Plot and being used as grazing field for the village cattles.

13. The Tahasildar, having found as above the Tahasildar has however preferred to sit over the matter awaiting the decision of the present suit which of course is not proper.

14. Here in the case, when the Plaintiffs have led evidence as to the user of the suit land, the Defendant No. 4 has denied the same. The Tahasildar being a responsible Officer of the State in the area has however found the user of the suit land to be in a particular manner which is communal nature. In such state of affair, this Court is of the view at the Courts below should have decreed the suit by simply issuing injunction against Defendant Nos.4 and 5 restraining from obstructing or preventing in any manner either directly or indirectly on such prevailing user of the suit land which is going on at present till the matter is finally decided in the Revision Petition by the forums provided under the said statute.

15. The substantial question of law being accordingly answered; this Appeal stands allowed to the extent of passing the decree as under:-

“The Defendants are hereby injuncted from interfering or obstructing in the user of the suit land by the villagers of Sangrampur as grazing ground for their cattles as it now stands till the RP Case No. 15605 of 1992 is finally decided by the forums as available.”

16. The Appeal is allowed in part to the extent as aforesaid. There shall, however, be no order as to cost.

(D. Dash),
Judge