

IN THE HIGH COURT OF ORISSA AT CUTTACK

R.S.A. No.435 of 2017

In the matter of appeal under Section 100 of the Code of Civil Procedure assailing the judgment passed by the learned Additional District Judge, Bhadrak in R.F.A. No.37 of 2005 modifying the judgment and decree dated 04.04.2005 and 23.04.2005 respectively passed by the learned Additional Civil Judge, Junior Division, Bhadrak in Title Suit No.236 of 1995-I.

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Srikanta Mohanty (Since Dead) by Appellants
his LRs & Others

-versus-

State of Odisha, represented by Respondents
through the Collector, Bhadrak &
others

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

For Appellants - Mr.G.Mishra
(Senior Advocate)

For Respondents - Miss.Samapika Mishra
(ASC for R.1)

CORAM:

MR. JUSTICE D.DASH

Date of Hearing : 11.10.2022 : Date of Judgment:20.10.2022

D.Dash,J. The Appellants, in filing this Appeal under Section 100 of the Code of Civil Procedure, 1908 (for short, ‘the Code’), has assailed the judgment and decree passed by the learned Additional District Judge, Bhadrak in R.F.A. No.37 of 2005.

The original Appellant No.1, namely, Srikanta Mohanty, with other two Appellants, as the Plaintiffs, had filed the suit, i.e. T.S. No.236/278 of 1995-I/2001-I (C.S. No.1/2005) against the Respondents arraigning them as the Defendants.

The Appellant No.1 having died during pendency of this Appeal, his legal representatives, have come on record as the Appellant No.1(a) to 1(d) in joining with Appellant Nos.2 and 3. The suit is for declaration of their right, title, interest and confirmation of possession and in the alternative, for recovery of possession with further prayer for a permanent injunction. The suit, having been decreed in part, confined to a portion of the suit land, these Appellants, being the unsuccessful Plaintiffs in respect of other part of the suit, had carried the First Appeal under section 96 of the Code. The First Appellate Court has disposed of the Appeal declaring the right, title and interest of the Appellants (Plaintiffs) and confirming their possession over 'Ka' Schedule land while dismissing the suit in respect of that part of the suit land as in 'Kha' Schedule land of the plaint.

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 suit as well as the First Appeal was contested by the State alone.

4. Facts necessary for the purpose, keeping in view the challenge made in the Appeal confined to the claim of the Plaintiffs over the suit land in 'Kha' Schedule land, it is stated in the plaint that the same originally belonged to Raja of Kanika and he had let out the same to the ancestors of the Plaintiffs.

It is stated that the grandfather of Plaintiffs 1 to 3 was in possession of the disputed land and he was paying the revenue to the State. It is stated that during the Major Settlement, the Settlement Authority erroneously prepared the Record of Right. It is stated that despite such recording, the Plaintiffs are in possession of the suit land since the time of their ancestors. The possession as such is said to be open, peaceful and continuous with hostile animus and the period of possession is stated to be more than sixty-six years.

5. The Defendant No.1, in the written statement, refuted the claim of the Plaintiffs over the suit land described both in 'Ka' and 'Kha' schedules of the plaint.

6. The Trial Court, on framing four issues, upon examination of evidence and their evaluation, has answered the crucial issues such as issue nos.2 and 3. The answer has been that the Plaintiffs have the right, title and interest over the 'Ka' Schedule land and accordingly, their possession over the same has been confirmed.

The claim of the Plaintiffs over 'Kha' Schedule land has been rejected.

There was no challenge from the side of the Defendant No.1 to the said decree passed in favour of the Plaintiffs in respect of 'Ka' Schedule land, which too has been affirmed in the Appeal, which had been carried by the Plaintiffs being unsuccessful in respect of their claim over 'Kha' schedule property.

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

“Whether the judgment passed by the First Appellate Court in the manner, as it has been done, can be sustained in the eye

of law in view of its failure in discharging its duty as the final Court of fact by evaluating the evidence in detail while affirming the findings of the Trial Court?"

8. Heard Mr.G.Mishra, learned Senior Counsel for the Appellants and Miss.S.Mishra, learned Additional Standing Counsel for the Respondent No.1.

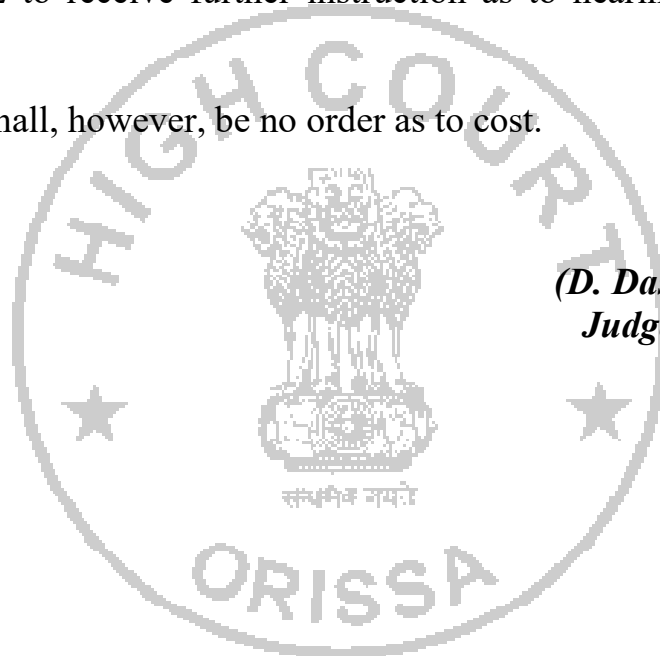
9. Keeping in view the submissions made, the judgment passed by the First Appellate Court being gone through, it is seen that in the second sub-paragraph of paragraph-8 of the judgment, the claim of the Plaintiffs, in relation to 'Kha' Schedule land has been dealt with. As against the case of the Plaintiffs that said land is in possession from the time of their ancestors for about sixty-six years till institution of the suit and that such possession was open, peaceful and continuous without any interruption from any quarter exercising all the rights of ownership as such in exhibiting hostile animus, the First Appellate Court has not at all touched upon any of those aspect with reference to the evidence by discussing the same as to their sufficiency or insufficiency in the matter of establishment of the claim of the Plaintiffs over the same. The First Appellate Court appears to have not examined the evidence on record in the backdrop of the rival pleadings as to how the conclusion of the Trial Court in rejecting the claim of the Plaintiffs in respect of 'Kha' Schedule land is sustainable. This being the manner of disposal of the First Appeal, which is continuation of the suit and the Court being the Final Court of fact; this Court, while expressing its dissatisfaction on the score, records the answer to the substantial question of law in favour of the Plaintiffs in holding that the judgment and decree passed by the First Appellate Court in so far as 'Kha' Schedule property are liable to be set aside, which is hereby done.

In that view of the matter, the matter is remanded to the First Appellate Court for a decision afresh in respect of that 'Kha' Schedule property in either declining or accepting the claim of the Plaintiffs after hearing the parties afresh in accordance with law in duly performing its duty as ordained under law.

10. The Appeal is accordingly allowed. In order to arrest the delay, learned counsels are requested to instruct their respective parties to appear before the Court of learned Additional District Judge, Bhadrak on 21.11.2022 to receive further instruction as to hearing of the First Appeal.

There shall, however, be no order as to cost.

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



Basu