

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

**R.S.A. NO.454 OF 2003**

In the matter of an appeal under Section-100 of the Code of Civil Procedure has assailed the judgment and decree passed by the learned 2<sup>nd</sup> Additional District Judge, Berhampur in RFA No.03 of 2003 (Title Appeal No.58 of 2001-GDC) by dismissing the judgment and decree passed by the learned Civil Judge (Junior Division), Berhampur in Title Suit No.260 of 1995 (Title Suit No.204 of 1994-BSJC).

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***Jagadish Kumar Behera & Another***

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*Appellants*

***-versus-***

V. Kameswar Rao &amp; Others



### Respondents

**Appeared in this case by Hybrid Arrangement  
(virtual/physical mode)**

## For Appellants

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M/s. S.S. Rao, B.K. Mohanty,  
B.K. Bag, Advocates.

## For Respondents

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M/s. Ashok Das, P. Ranjan,  
P.K. Dhal, L.M. Nanda,  
P.K. Khuntia, Advocates.

**CORAM:**

**MR. JUSTICE D.DASH**

**DATE OF HEARING::05.07.2022, DATE OF JUDGMENT:: 18.07.2022**

***D.Dash, J.*** The Appellant by filing this Appeal under Section 100 of the Code of Civil Procedure 1908 (for short, ‘the Code’) have assailed the judgment and decree passed by the learned 2<sup>nd</sup> Additional District Judge, Berhampur in RFA No.03 of 2003 (Title Appeal No.58 of 2001-GDC).

By the same, the Appeal filed by the learned present Appellants, who had suffered from the judgment and decree passed by the learned Civil Judge (Junior Division), Berhampur in Title Suit No.260 of 1995 (Title Suit No.204 of 1994-BSJC) have been confirmed and thus the suit filed by the Respondents as the Plaintiffs has been decreed in declaring them to be having the title over the suit land and permanently restraining these Appellants (Defendants) from entering and interfering with the possession of the Plaintiffs over the suit site.

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 Suit.

3. It is the case of the Plaintiff that one V. Gurumurthy was the owner of the house standing over the land under Plot No.436/1101 appertaining to Khatian No.242 measuring an area Ac.0.010 decimals out of the total extent of Ac.0.023 decimals at Gopalpur. Said V. Gurumurthy being in possession of the said property was granted that the last settlement Patta in respect of the suit property. He died on 25.11.1986 and was survived by five sons who are the Plaintiffs. After few years of death of Gurumurthy, the thatched house standing over the suit land got damaged and the Plaintiffs for their financial problems could not repair the same in time. However, they remained in possession

of the same using it as storing place for firewood and other fishing materials.

They state that the Defendants are in no way related to them and as such have no right, title and interest over the same. As on 14.02.1994, the Defendant No. 3 with the help of some labourers attempted to enter upon the suit property by force in order to dig foundation, the Plaintiffs objected to the same. Then, the Defendant No.3 sold away the property to Defendant No.1 by executing the registered sale-deed, who purchased the same on behalf of his son, the Defendant No.2. The matter was reported to the local police. The Plaintiffs allege that the Defendants have colluded in creating all these false and frivolous documents being in collusion with one another. They further state that being Nolia by caste, they are the members of the Scheduled Caste Community and as such any alienation of their land has to be with prior permission of the Competent Authority as provided in Section-23 of the Orissa Land Reforms Act, 1960 (for short, 'the OLR Act'). So, it is stated that by these documents, the title over the property in question have not gone to the hands of the Defendants and they are unnecessarily interfering with the peaceful possession of the suit land by the Plaintiffs. The suit thus, came to be filed.

4. The Defendant No.1 in her written statement has denied the title and possession of the Plaintiffs over the suit property. It is stated that the suit site never belong to V. Gurumurthy and he was not in a position of the same at any given point of time. The claim of ownership of the suit land by the Plaintiff has been denied by them so also their possession over the same.

It is specifically stated that one Venka Errayya had two sons namely, V. Krishnamma and V. Narasimhulu. Gurumurthy, father of the Plaintiffs was the sons of V. Narasimhulu and his wife pre-deceased V. Lachhmi. In the year, 1967, V. Krishnamma died and his widow V. Lachhmi succeeded to his property. Two brothers Narasimhulu and Krishnamma had an ancestral thatched house standing over the land extending to Ac.o.023 decimals which was the part of Gramakantha and village site Paramboke land. They partitioned said ancestral house and site. It is stated that V. Narasimhulu got the eastern part of an extent of Ac.0.013 decimals and V. Krishnamma, the western part to the extent of Ac.0.010 decimals. Thus, Krishnamma stayed in his house and possessed the site extending to Ac.0.010 decimals till his death which took place in the year, 1967. After him, the widow Lachhmi possessed the same having exclusive right and title. In the settlement operation of the year, 1976, both the plots have been erroneously recorded in the name of V. Gurumurthy, the father of the Plaintiffs. V. Lachhmi being an

old widow then crossing her sixties, V. Gurumurthy, the father of the Plaintiffs having taken advantage of the same as also her literacy, under false representations before the Settlement Authority got his name recorded in the ROR in respect of the suit site which actually did not belong to him and was resting with V. Lachhmi. So, by virtue of said recording which is wrong; the Plaintiffs do not have any right, title, interest and possession of the suit site. It is next stated that V. Lachhmi to meet her legal necessity sold the suit site with the dilapidated house to Defendant No.1 on receipt of consideration of Rs.4,000/- and she had delivered possession of the same to Defendant No.1. The Tahasildar after above purchase being made, on an application for mutation by Defendant No.1, filing Mutation case No.1260 of 1988 having found possession of the Defendant No.1 over the suit site has recorded the same in favour of the Defendant No.1 in respect of Ac.0.010 decimals. The land was assigned with separate plot number i.e. 436/1101. This Defendant No.1 then sold the suit land to Defendant No.2 on 09.05.1990 for consideration of Rs.4,700/- and delivered possession of the same to Defendant No.2 who is thus in possession of the same. It is said that Defendant No.2 has laid foundation and started construction of house over the suit site. The Defendant No.1 also denies the caste of the Plaintiff as pleaded by them to be Nolia. It is stated that their caste is Wada Balaji, which is not within the list of the Scheduled Castes for the

State of Orissa. So, it is said that the provision of section-23 of the OLR Act has no application.

5. The Defendant Nos. 2 7 3 in their written statement pleaded in the same light as that of the Defendant No.1. According to them, the Tahasildar made note of possession in respect of the suit land in favour of Defendant No.2 as the nature of land as Gharabari and as such not transferable.

6. On the above rival pleadings, the Trial Court finally framed eight issues.

At this stage, it may be stated that the suit having been decreed, at the first round, the Defendants had carried Appeal i.e. Title Appeal No.45 of 1999. The First Appellate Court at that stage allowed the Appeal and having set aside the judgment and decree passed by the Trial Court remanded the suit with a direction to frame three additional issues and answer all those and render the decision afresh.

7. The Trial Court upon examination of evidence and their analysis has held that the evidence on record are not sufficient to say that V. Krishnamma was the second son of V. Errayya. The issue with regard to partition as claimed by the Defendants has also been answered in the negative. These findings have practically led the Trial Court to decree the suit.

The Defendants having suffered from the above judgment and decree passed by the learned Trial Court after remand having carried the First Appeal have been unsuccessful. Hence, the present Second Appeal.

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

- (i) Whether the Courts below have wrongly placed the burden on Defendants, when the plaintiff filed the suit for declaration of title and possession and when they have not disputed the existence of V. Laxmi is not in dispute and Mutation/ Demarcation records were also available?
- (ii) Whether Courts below erred in law in not accepting the Ext.L, death certificate, on the ground that it was not further established as to who has given the information?

9. Learned Counsel for the Appellants submitted that the Plaintiffs having filed the suit for declaration of title and possession, when do not dispute that V. Lachhmi was the widow of V. Krishnamma, the Courts below ought to have placed the burden of proof upon the Plaintiffs to discharge that this suit property was in the share of V. Krishnamma. He further submitted that the death certificate, Ext.L showing V. Krishnama, the son of V. Errayya to have died on 11.12.1957 being public document ought to have been accepted and presumed to be correct in all respect and that being given its due weightage, the Court

below ought to have held that the Plaintiffs are not entitled to a decree as to declaration of their right, title and interest over the suit property.

10. Learned Counsel for the Respondents submitted all in favour of the findings recorded by the Courts below. According to him, on the face of the documentary evidence on record, the Courts below did commit no mistake in placing the burden of proving the fact that Errayya had two sons namely, Narasimhulu and Krishnamma and that in partition between them, the suit property had fallen to the share of V. Krishnamma upon the Defendants. He further submitted that Ext. L, death certificate of V. Krishnamma, has been rightly eschewed from consideration by the Courts below and the reasons assigned for the purpose are all justified.

11. Keeping in view the submissions made, I have carefully read the judgments passed by the Courts below. I have also gone through the pleadings and have perused the evidence.

12. It is not in dispute that originally the property belong to V. Errayya and that it was recorded in the name of V. Narasimhulu in the sabik settlement record, which can be seen from the document i.e. Ext.M. The question is whether Errayya had two sons namely, Narasimhulu and Krishnamma. When the Plaintiffs state that the land stood recorded in the name of Gurumurty, thereafter, in the current

settlement record and he has the right, title and interest over the same; they state that he is the only son of Narasimhulu.

Ext.1 is the record of right and Ext. 2 is proceeding before the Settlement Officer, which reveal that V. Gurumurthy was the recorded owner of the suit property. When the Plaintiffs witnesses deny the fact that Narasimhulu and Krishnamma were two brothers; the Defendants proving Ext.M, the yadast of Sabik ROR have placed before the Court that Narasimhulu was owner in possession of the suit property. In such state of affairs in the evidence, the Plaintiffs having proved the foundational facts in support of their case; the burden of proof of the fact that Krishnamma and Narasimhulu were two brothers being the sons of Errayya lies upon the Defendants and therefore, the Courts below are not found to have committed any error in urging upon the Defendants to discharge the said burden of proof so as to shift the onus to the Plaintiffs. The oral evidence adduced from the side of the Defendants having been thoroughly scanned, the Courts have concurrently concluded that the Defendants have not been able to establish that Krishnamma and Narasimhulu were two brothers being the sons of Errayya and also that there was partition between two wherein the property in suit had fallen to the share of V. Krishnamma.

13. Ext. L, proved from the side of the Defendants is the certified copy of death certificate of the V. Krishnamma. The suit having been

instituted in the year, 1994, this document has been obtained on 16.07.1999 and had been admitted as additional evidence in the first Appeal on the first round. The death of Krishnamma having said to have taken place on 11.12.1957, it has been registered much later i.e. on 16.07.1999. The document is a post-litem document and it has been obtained pursuant to an order passed by the Executive Magistrate in Misc. Case No.09 of 1999. Under the given situation, although finding the certificate to have been issued by the Competent Authority, the Courts below have rightly refused to attach importance to the same with regards to the noting of its contents when and as no such evidence regarding the source/s of information as to the death of V. Krishnamma who has been described as the son of Errayya therein and other such particulars have been piloted.

In the wake of the aforesaid, the answers to the substantial questions of law run in favour of confirmation of the judgments and decrees passed by the Courts below.

**14.** In the result, the Appeal stands dismissed. No order as to cost.

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