

IN THE HIGH COURT OF ORISSA AT CUTTACK

R.S.A. No.305 of 2015

In the matter of appeal under Section 100 of the Code of Civil Procedure assailing the judgment and decree dated 12.05.2015 and 16.05.2015 respectively passed by the learned District Judge, Bhadrak in R.F.A. No.28 of 2016 confirming the judgment and decree dated 31.01.2003 and 13.02.2003 respectively passed by the learned Civil Judge, Senior Division, Bhadrak in T.S. No.16 of 1988-I.

Sri Umakanta Jena & Others* *Appellants

-versus-

Sri Pranakrushna Jena & Others* *Respondents

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

***For Appellants* - Md.G. Madani
(Advocate)**

***For Respondents* -**

CORAM:

MR. JUSTICE D.DASH

Date of Hearing : 12.10.2022 : Date of Judgment:20.10.2022

D.Dash,J. The Appellants, 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 12.05.2015 and 16.05.2015 respectively passed by the learned District Judge, Bhadrak in R.F.A. No.28 of 2016.

By the same, the Appeal filed by these Appellants under section 96 of the Code in challenging the judgment and decree dated 31.01.2003 and 13.02.2003 respectively passed by the learned Civil Judge, Senior Division, Bhadrak in T.S. No.16 of 1988-I, has been dismissed and

thereby, the Appellants, who had prosecuted the suit, as the Plaintiffs, having been non-suited by the Trial Court, the same position has not undergone any change even though moved by carrying the First Appeal.

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.

It may be stated here that the original Plaintiffs having died during the suit, their legal representatives prosecuted the suit and they had carried the First Appeal. Some of the Defendants having also died during the suit and First Appeal, their legal representatives have come on record

3. The Plaintiffs' case is that the suit schedule property originally stood recorded in the name of Pachei, Banchha and Bhagi. As per the current settlement of record of right (Ext.1), each thus had 1/3rd share therein. The ancestor of the Plaintiffs and Defendants 1 to 11 had got the suit land from the then Zamindar as JAGERI land for rendering the service as Drum Beaters. They stayed there by constructing the residential house. The original Plaintiffs, namely, Bidyadhar and Sridhar are the sons of Pachei Jena and so also the Defendant No.5. Defendants 1 to 4 are the successors of Bhagi jena whereas the rest of the Defendants are the successors of Banchha. It is stated that the Defendant No.5, having been kept as domesticated son-in-law by his father-in-law, left his paternal home and as such, he had no interest in the suit land. The suit properties have been jointly recorded in the Major Settlement Record of Right. It is claimed that though the parties are possessing some parcels of land each separately and they are enjoying as such that is according to their convenience but there has never been any partition

in metes and bounds. The Defendant No.12 is stated to be a stranger to the family and as he claims to have purchased some land from out of the suit property, it is said that in view of the provisions under section 44 of the Transfer of Property Act, 1882, he is not entitled to get and enjoy the said land. So, they filed the suit for partition.

4. The Defendants 1 to 2, in their written statement, contended that the suit land had been previously partitioned and keeping in view of the possession of the parties, the Collector, in discharging his duty, as enjoined under Orissa Estate Abolition Act, 1951 (for short, called as 'the OEA Act'), had fixed the rent and accordingly, separate khatahs have been prepared. They, therefore say that the suit for partition is not maintainable.

It is stated that the Plaintiffs were very much parties to the proceeding before the O.E.A. Collector in that Suo Motu Case No.14 of 1985 which stood finally decided on 07.03.1986. According to them, separate rent roll has been prepared on the strength of the order passed in that suo motu proceeding and those are in the name of Chakradhar, Dinabandhu and Hadibandhu. The Plaintiffs have never challenged such order passed in suo motu proceeding in the forum, as prescribed under the law and as such, the same is final and binding. It is thus stated that they are possessing the suit land in their independent capacity and not as the co-sharers when the properties are no more the joint family property available for partition amongsts the parties.

5. On the above rival pleadings, the Trial Court, in total, has framed four issues. Those questions are practically inter-twined. Upon examination of the evidence and their evaluation, the answers have been

returned by the Trial Court against the case/claim of the Plaintiffs seeking the partition of the suit properties.

The First Appellate Court, being moved by the unsuccessful Plaintiffs, has accepted such findings returned by the Trial court by addressing the contentions raised therein. It has thus confirmed the findings of the Trial Court.

6. Learned counsel for the Appellants submitted that even though the land is settled in favour of the Defendants, the Plaintiffs when then were having the right to apply for settlement in their names under the O.E.A. Act, said settlement would enure to the benefit of all and would not remain confined only to those settlees. He, therefore, submitted that when such is the position, the Courts below ought not to have found any difficulty in passing a preliminary decree partition. He, therefore, urged for admission of the Appeal to answer the above as the substantial questions of law.

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

8. As provided in section 8(A) of the Act, the Ex-intermediary, is required to make an application within a period of six months from the date of vesting of the estate State in claiming the lands in respect of which he is entitled for settlement under section 6 & 7 of the said Act.

Under sub-section 2 of section-8(A), any person rendering personal service to an intermediary and holding lands for the purpose of available terms is under the obligation to advance his claim within six months from the date of vesting for settlement of jagri land.

Sub-section 3 of section 8 of the OEA Act states that if an application is not presented in time, then the land in question would vest

with the State. Such provision being there, it came to the notice of the State Government that several intermediaries did not file applications in time. So, to save the situation, causing harassment to those persons, the Government decided that the State would grant fresh lease of lands to those very persons, who would have been otherwise entitled to retain the land had they applied in time on realization of arrear rent and salami equivalent to three years rent. This concession, which had been granted by the State by order dated 28.02.1960 was withdrawn by Government order dated 7.3.1963 for the reason that several ex-intermediaries even whose earlier applications for settlement under the OEA Act had been earlier been rejected came forward to file the applications to get back the same land. But, thereafter, the Government realized that total withdrawal of the concession as given by letter dated 28.02.1960 has caused hardship to several such ex-intermediaries, who have their genuine claims. Therefore, by Government order dated 02.03.1964, which was originally valid till 30.06.1964 and later on extended from time to time, a set of principles were evolved for entertaining and decide all applications filed by the ex-intermediaries. By virtue of that Government Order, the land which had been vested with the State Government were settled with the applicant by way of lease under certain terms and conditions stipulated in the Government Order. This settlement is thus not a settlement under the OEA Act and the settlement made was on charging the salami equivalent to three times the annual rent. Dealing with such matters, our own High Court, have consistently held in series of cases that such settlement in favour of one of the co-sharers would not enure to the benefit of all the co-sharers as it enures in case of settlement under the OEA Act. The set of rules commonly known as lease principles is a complete Code by itself and nowhere

from the said set of rules, it is inferable that the lease of the land in favour of one of the co-sharers would also stand to benefit the other co-sharers.

Thus, when the above settled position of law squarely applies to the facts and circumstances of the case at hand, the conclusion of the Courts below that the suit for partition, at the instance of the Plaintiffs, in seeking a preliminary decree for having their share over the suit land is liable to be dismissed, have to stand.

For all these aforesaid, this Court is not in a position to accept the submission of the learned counsel for the Appellants that the Appeal merits admission to answer any substantial question of law.

9. In the result, The Appeals stand dismissed. There shall, however, be no order as to cost.

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

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