

IN THE HIGH COURT OF ORISSA AT CUTTACK

R.S.A. NO.476 OF 2015

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 District Judge, Balasore, in RFA No.150 of 2015 by confirming the judgment dated 18.05.2015 passed by the learned Civil Judge (Junior Division), Soro in Civil Suit No.99 of 2012-I.

Manas Kumar Sahu & Another *Appellants*
-versus-

Arjun Behera *Respondent*

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

For Appellants ::: M/s.B.H. Mohanty, Sr. Advocate,
D.P. Mohanty, R.K. Nayak,
T.K. Mohanty, P.K. Swain,
M. Pal, Advocates.

For Respondent ::: M/s. Samir Kumar Mishra,
J. Pradhan, P.P. Mohanty,
Advocates.

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

DATE OF HEARING::21.07.2022, DATE OF JUDGMENT:: 08.08.2022

The Appellants 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 District Judge, Balasore, in RFA No.150 of 2015.

By the same, the Appeal filed by the present Appellants (Plaintiffs) under Section-96 of the Code had been dismissed and thereby the judgment and decree passed by the learned Civil Judge (Junior Division),

Soro in Civil Suit No.99 of 2012-I dismissing the suit filed by the Appellants (Plaintiffs) as against the Respondent (Defendant) have been confirmed. The suit filed by these Appellants (Plaintiffs) has been dismissed and they have been non-suited.

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. Plaintiffs case is that they had purchased the suit land from the Defendant by registered sale-deed dated 09.04.1999 and as such being the owners are in possession of the same. The record of rights of the suit land being published, the Plaintiffs approached Tahasildar for mutation of the said land on the basis of the sale-deed in their favour. The prayer being rejected, the suit has come to be filed seeking the relief declaration of right, title and interest over the suit land and for permanent injunction against the Defendant.

4. The Defendant in the written statement while traversing the plaint averments has stated that during the year, 1999, he was staying in an Ashram at a distant place as he had then the Paralytic attack and was in that condition. It is specifically stated that on 09.04.1999 during morning hours due to snake bite he was taken to the hospital and underwent treatment. It is alleged that during that time, taking advantage of the situation and helpless condition of the Defendant, the Plaintiffs had taken away his signatures on 6 to 7 blank stamp papers giving assurance to him

to arrange Government assistance and those are said to have been subsequently utilized in creating a sale-deed in respect of the suit land. The Defendant asserts to have never executed any deed of sale in respect of the suit land in favour of the Plaintiffs.

5. On the above rival pleadings, the Trial Court has framed in total nine(6) issues.

On going through the evidence mainly the documents, the Trial Court has held that in view of the provision contained in section-51 of the Orissa Consolidation of Holdings and Prevention of Fragmentation of the Land Act, 1972 (for short 'the OCH&PFL Act'), the suit as laid is not maintainable. The Plaintiffs thus being non-suited having carried the Appeal have also been unsuccessful there. Hence, the present Second Appeal.

6. Learned Counsel for the Appellants submitted that the First Appellate Court having come to conclusion that the sale-deed Ext.4 is invalid in the eye of law as being without any permission as required under Sub-Section-2 of Section-4 of the OCH&PFL Act has failed to take into consideration the broader aspects of the said provision that the restriction is confined to the lands which form a part of the consolidation scheme which are to be dealt with under the OCH&PFL Act. According to him, the sale-deed, Ext.4 cannot be said to be void and to have not clothed any right, title and interest in favour of the Plaintiffs in respect of the suit

land. He, therefore, urged for admission of this Appeal to answer the above as the substantial questions of law.

7. Learned Counsel for the Respondent in assisting the Court in the matter of admission submitted all in favour of the conclusion arrived at by the Courts below. According to him, on the face of the provision contained in the OCH&PFL Act as at Section-4(2) of the Act, the Courts below are absolutely right in dismissing the suit.

8. Keeping in view the submissions made, I have gone through the judgments passed by the Courts below.

9. In the given case, the sale-deed, Ext.4 which is the basis of the claim of the Plaintiffs that they have right, title, interest and possession over the suit property as to have been purchased by them under the sale-deed has come to be executed after the publication of the land register under Section-9 or 13 of the OCH&PFL Act as the case may be. The Plaintiffs claimed to have purchased the suit property on 09.04.1999. The sale-deed contends the description of the land involved therein with reference to the plot numbers of the land register. Thereafter, at no stage any objection has been filed by the Plaintiffs to correct the entries made in the land register by virtue of transfer in their favour and claiming as such. In view of that, there has been no adjudication by the Authorities vested with the power under the OCH&PFL Act on the claim of the Plaintiffs. Sub-section-2 of Section-51 of the OCH&PFL Act is very clear on the field that no Civil Court can entertain any suit or proceeding in respect of

any matter which an Officer or Authority empowered under the said Act is competent to decide. Even then after the closure of the consolidation operation by virtue of notification under Section-41 of the OCH&PFL Act provision contained in Section-37 of the said Act stands for redressal of the grievance in this light before the forms created under the said Act. Therefore, the view taken by the First Appellate Court that provision of Section-51 of the OCH&PFL Act stands as the bar for entertainment of the suit is found to be well in order. Furthermore, when the transaction in question is said to have taken place during the consolidation operation that is after publication of the final land register that to without obtaining prior permission of the Authorities prescribed under the said Act, the Courts below are found to have rightly taken the view that the deed in question being void, the prayer of the Plaintiffs for passing a decree for permanent injunction is not acceptable.

For the aforesaid discussion and reasons, this Court is not in a position to accept the submission of the learned Counsel for the Appellants that there arises the substantial questions of law so as to be answered meriting admission of this Appeal.

10. In the result, the Appeal stands dismissed. However; there shall be no order as to cost.

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