

IN THE HIGH COURT OF ORISSA AT CUTTACK

RSA No.346 of 2018

In the matter of an Appeal under section 100 of the Code of Civil Procedure assailing the judgment and decree dated 12.03.2018 and 23.03.2018 respectively passed by the learned District Judge, Balasore in RFA No. 118 of 2013 confirming the judgment dated and decree dated 29.06.2013 and 12.07.2013 respectively passed by the learned Civil Judge (Senior Division), Balasore in C.S. No.957 of 2010-I.

Sarada Charan Panda

....

Appellant

-versus-

State of Odisha & Others

....

Respondents

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

For Appellants - M/s.Soumya Mishra, R.K. Das,
A. Mohanta, E. Agarwal,
L.K. Maharana, Advocates.

For Respondents - Mr. S. Pattnaik,
Additional Govt. Advocate.

CORAM:

MR. JUSTICE D. DASH

DATE OF HEARING : 07.12.2022, DATE OF JUDGMENT:23.12.2022

The Appellant, by filing this Appeal under Section 100 of the Code of Civil Procedure (for short, 'the 12.03.2018 and 23.03.2018 respectively passed by the learned District Judge, Balasore in RFA No.118 of 2013).

By the same, the Appeal filed by the Appellant as the unsuccessful Plaintiff in C.S. No.957 of 2010 of the Court of learned

Civil Judge, Senior Division, Balasore under section 96 of the code has been dismissed.

The Appellant (Plaintiff) having been non-suited in the suit filed by him for declaration and injunction; the same has been confirmed by the first Appellate Court.

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. Plaintiff's case is that the suit land originally belong to Samanta Radha Prasanna Das, ex-zamindar and it was lying fallow without being cultivated. The suit land was recorded in the name of said ex-zamindar in the current settlement. The father of the Plaintiff was working as a Gumasta (Manager) under the ex-zamindar. Since the suit land was lying fallow, on an approach being made by the father of the Plaintiff, the ex-zamindar finding him to be having no land in the suit village issued an Amalnama Patta on 15.03.1943 in his favour and then granted permanent lease of the suit land, receiving Salami of Rs.500/-. After issuance of this said patta, suit land was mutated in the name of the father of the Plaintiff under zamindari sherista, the rent was collected and rent receipts were being granted. After vesting of the zamindari, ektopadia was submitted to Government and then the Government

received rent from the father of the Plaintiff. During major settlement operation, the record of right in respect of the suit land was prepared in the name of Plaintiff basing upon that Amalnama Patta, rent receipts and the tenants ledger which had been opened in the name of the father of the Plaintiff. It is stated that the Plaintiff was in possession of the suit land after publication of the major settlement record of right and he being the absolute owner of the land has been possessing the same as sthitiban tenant. It is stated that behind the back and knowledge of the Plaintiff, the suit land has been recorded in the name of Government Khata without any basis during the consolidation operation and in the consolidation record of right, the suit land has been recorded under Rakhit Khata in the name of the State which has been published in the year 1997. The said publication of ROR is questioned / attacked to be wholly erroneous and illegal. It is stated that the suit land was never transferred to the State at any point of time nor was acquired by the State. The fact of wrong recording of the suit land in the consolidation record of right was learnt by the Plaintiff on 25.10.2010 when the local Revenue Inspector asserted the land to be the Government land and he directed the Plaintiff to vacate possession of the same. So serving notice under section 80 C.P.C., the Plaintiff filed the suit seeking a declaration that the consolidation record of right prepared in the name of Defendant

No.1 State under Rakhit Khata as illegal and erroneous and with further relief of permanent injunction.

4. The Defendant (State & its officials) in the written statement asserted that the suit land was the personal land of Samanta Radhaa Prasanna Das with Kisam-Bari and Kalabari. So there was no scope for him to lease out the same by Amalnama Patta. It is stated that under the provisions of Orissa Tenancy Act, the ex-zamindar was authorized to create tenancy through Amalnama Patta in respect to the waste land. They state that ex-zamindar had never submitted any Ekpadia to the Government and the tenancy was never recognized by the Government after vesting and that no rent was received either from the Plaintiff or his father. It is asserted that it was not within the jurisdiction of the settlement authority to record Major Settlement Plot No.315 taking portion of the land from Current Settlement Plot No.170 which was in possession of the State Agency and was being occupied and possessed as the office compound of local Revenue Inspector. It is also been stated that in terms of the provisions of Para-24 of Orissa Mutation Manual initiating a suo motu proceeding for correction of record of right in Misc. Case No.56 of 2017; the suit land had been acquired through a valid acquisition proceeding paying compensation to the Plaintiff. The consolidation authority had rightly taken note of said valid acquisition

made by the Government in respect of the suit land and accordingly, the record of right has been prepared, in respect of the suit land in Rakhit Khata. Neither the Plaintiff nor his father was in possession of the suit land. The Gram Panchayat office is situated adjacent to the office compound of local Revenue Inspector and the premises of Gram Panchayat office being only Ac.0.04 decimal, there was no sufficient space for the building. Out of the funds allotted by the Government of India in the name and style as 'Bharat Nirman Rajiv Gandhi Seva Kendra', the then Collector, receiving the requisition from the Block Development Officer, directed for allotment of Ac.0.063 decimal of land out of the suit plot adjacent to the premises of the Gram Panchayat office for construction of the building. After demarcation and delivery of possession of that land, the Seva Kendra building has been erected over the suit land.

5. Faced with the above rival pleadings, the Trial Court has framed eight issues. Coming to decide the crucial issue no.5 & 6 as regards, the jurisdiction of the Civil Court to try this suit in which the relief of declaration record of right published in respect of the suit land in the consolidation as erroneous and illegal, has answered the same against the Plaintiff. The issue which has next been answered that the consolidation record of right having been published in 1997, the suit

filed in the year 2010 is barred by limitation. Practically, these answers have led the Trial Court to dismiss the suit.

6. The Plaintiffs having thus being unsuccessful before the Trial Court having carried the First Appeal has not been able to obtain any fruitful result.

7. Learned counsel for the Appellant submitted that when the cause of action for filing the suit has arising after consolidation operation, the Court below are not right in saying that the Civil Court has no jurisdiction to decide the suit for the reliefs claimed. He further submitted that the Courts below in the suit filed after closer of consolidation of operation ought to have held that the recording of the suit land in the consolidation operation being without any basis and thus there being non-compliance of the provisions of the Act and Rules when the forums under the Odisha Consolidation of Holding and Prevention Fragmentation of Land Act (O.C.H.&P.F.L.) Act has not acted in conformity with the fundamental principles of judicial procedure, they should have assumed the jurisdiction. He thus submitted that the Courts below ought to have held that the preparation of the consolidation record of right is without any basis and therefore, they should have decreed the suit. He thus submitted for admission of this Appeal to answer the above as the substantial question of law.

8. Learned counsel for the State assisting the Court in the matter of admission of the Appeal, submitted all in favour of the conclusions arrived at by the Courts below. According to him, the consolidation record of right having been published in the year 1997 and since the Plaintiff has not challenged the same nor sought for its correction in any forum as available under the O.C.H.&P.L.F Act, merely citing the closure of the consolidation operation, after more than 12 years having instituted the suit, the Courts below have rightly shown him the door of exit in refusing to grant the reliefs as prayed for in the suit.

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

10. Admittedly, the Plaintiff in the suit challenges the record of right published in the consolidation operation in the year 1997. In Alienation Proceeding No.03 of 2006, the suit land has been recorded in Anabadi Khata which finds place in the noting appearing on Ext.D., the copy of the consolidation record of right. So the recording of the suit land under Abadjogya Anabadi Khata is based on the order passed in Alienation Proceeding initiated in the year 2006. Prior to the Alienation Proceeding of the year 2006, the suit land has been recorded in Rakhit Khata in Kisam Gharabari with a noting in the remark column as to the existence of Office of Gram Panchayat and Revenue Inspector. In order to

challenge the decision of the Consolidation Authority and publication of the record of right finally made in the said operation, the Plaintiff is required to satisfy that the cause of action had arisen after close of consolidation operation and that the consolidation authority has not acted in conformity with the provisions of the Act and taken the decision as such or that they have not acted with the fundamental principles of judicial procedure or that the order is the outcome of the fraud practiced upon them. The Courts below on the basis of the pleading and evidence let in by the Plaintiff in this suit of the year 2010, have concurrently held that no such case has been made out to clothe the jurisdiction upon the Civil Court to sit over to decide the correctness of the final record of right published in consolidation operation in the year 1997. It has also been held that the Plaintiff has not led any satisfactory proof through evidence to suggest that the consolidation authorities have not acted in conformity with the fundamental principles law and judicial procedure and thus have illegally recorded the suit land in the name of the State. The facts and circumstances as aforesaid being made to pass through Full Bench the decision of this Court in case of ***Guljaar Khan V. Commissioner of Consolidation and Others***; 76 (1993) CLT 161, this Court finds that the Courts below did commit no wrong in ultimately dismissing the suit in refusing to grant reliefs to the Plaintiffs

as prayed for. It is thus held that no such substantial question of law surfaces for being answered in this Appeal meriting its admission.

11. The Appeal is accordingly, dismissed. There shall be no order as to cost.

(D. Dash),

Judge.

Gitanjali

