

R.S.A. NO.381 OF 2017

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and decree passed by the learned Civil Judge (Senior Division), Kendrapara in Title Suit No.119 of 1998 has been dismissed and thereby the suit filed by these Appellants (Plaintiffs) arraigning the Respondents as the Defendants therein has been dismissed. All these Appellants (Plaintiffs) 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. The Plaintiffs suit is with the prayer for declaration of occupancy raiyat in respect of the suit land which in total measures Ac.34.78 decimals appertaining to Khata No.7 assigning Plot Nos.15, 17, 18 and 20 of village Nipania under Mahakalpada Tahasil which was previously under Marshaghai Tahasil and was under Nipania Forest Block of the ex-intermediary of Kujanga Estate.

It is stated that it was the practice in the Kujanga Estate that waste and fellow land were being settled with the persons who used to reclaim and cultivate same. It is stated that the ancestors of the Plaintiffs reclaimed the said land in the year, 1942 to the knowledge of the ex-landlord of Kujanga Estate and their employees. They cleared bushy plant over the suit land and constructed Gheri Bandha around it by spending money from their pocket. They made the suit land fit for

cultivation from the year, 1947. It is stated that they were raising paddy crops and were paying rent in kind as had been determined by the employees of the Ex-landlord and they were also paying salami. It is further stated that before any formal settlement of the land in favour of the ancestors of the Plaintiffs, the estate was taken over by the State. But even then the predecessors of the Plaintiffs as well as Plaintiffs continued to possess and cultivate the land as tenants. The Plaintiffs claim their ancestors to have reclaimed the suit land in the year 1942, and have been continuously in cultivating possession of the suit land as tenants under the Ex-landlord and then also under the State for more than statutory period. So, it is stated that the Plaintiffs have acquired right of occupancy raiyat over the property. It is stated that in the year, 1970, Forest Settlement Case No.17 was initiated against the Plaintiffs and their predecessors. During verification, at the spot, the Forest Settlement Officer finding the land to be under cultivating possession of the Plaintiffs, passed order for execution of said land from the purview of the forest settlement. It is alleged that the Defendants who are the employees of the State Government in spite of the claim of continuous possession of the suit land by the Plaintiffs from the time of their predecessors by reclamation in the year, 1942 are not settling the same with them by fixing the rent and on the other hand initiating cases for

their eviction under the provision of Orissa Prevention of Land Encroachment Act, 1972 and are harassing them. On 07.04.1986, when the Plaintiffs requested the Defendants for settling rent and that was not paid any heed; the suit has been filed by serving notice under Section-80 of the CPC.

The Defendant Nos. 1 & 2, the Collector and the Tahasildar being other authorities of the State in the District level in their written statement have stated that rightly the suit land as claimed by the Plaintiffs have not been settled. It is stated that the suit land is Government land and recorded such in the record of right and the same is in khas possession of the State. They further stated that the Plaintiffs were / are never in possession of the suit land at any given point of time from the time of their ancestors and accordingly, they are not entitled to relief(s) claimed.

4. The Defendant No. 3, Divisional Forest Officer in his written statement has denied that the Plaintiffs are the settled raiyat in respect of the suit land. It is stated that the plaintiffs and their predecessors have manipulated and created fabricated documents to raise false claim over the suit land and are never in possession over any portion of the suit land nor their ancestors were having any house over there. It is stated that the suit land was initially part of the Kujanga Estate, but the same

was never been leased out to the Plaintiffs or any other predecessors by the Ex-landlord / Ex-proprietor and the Ex-landlord/ Ex-proprietor has no right to lease out the suit land. It is further stated that the entries in the record of right has been correctly made and after vesting to the same with the State, the suit land has been transferred by the Revenue Department to Forest Department. The Government of Orissa by exercise of power under Section-4 of the Forest Act has published a notification constituting the suit land as Reserve Forest. The Forest Settlement Officer however after making enquiry to the claims made by the Plaintiffs has found the Plaintiffs having no right, title and interest over the suit land and they have been found to be encroachers after publication of the final record of right in the year, 1966. So, it is stated that the Plaintiffs cannot claim any right in respect of reserve forest land in absence of grant or any contract made on behalf of the State Government as per the provision of Orissa Forest Act. It is further stated that the suit is barred by virtue of the provision contained in Section-5 of the Orissa Forest Act. It is stated that the Plaintiffs have no title over the suit land either by occupancy raiyat or otherwise. It is stated that the Plaintiffs being recent encroachers of the suit land which is part of the proposed reserve forest, the present suit for declaration of occupancy raiyat is not maintainable and the Civil Court has no jurisdiction to try

the present suit containing the reliefs as prayed for therein. In the final report of the Survey Settlement of the Kujanga Forest Block prepared in the year 1959-66, the suit land is stated to have been classified as Jungle-1 (dense) and the Government of Orissa vide notification dated 04.10.1961 in exercise of power under Section-29 of the Indian Forest Act 1927 and in suppression of all provisions of order has declared the forest land as waste land in Mahakalpada under Kujanga Ex-jamindar Estate as the property of Forest Department of the State Government and to remain as protected forest. The Government of Orissa vide notification dated 27.06.1970 in exercise of power under Section-4 of the Indian Forest Act had declared that the suit land of Forest Block in Kujanga range as to have been proposed to be reserve forest. It is further case of the Defendant No.3 that suit lands are coming within category of one Coastal Regulation Zone as notified under notification dated 19.02.1991 of the Ministry of Environment and Forest, Government of India. It is further stated by virtue of Section-2 of the Forest Conservation of 1988, the forest land cannot be leased out or settled without prior approval of the Government of India and penal section has also been inserted in the said Act for such violation to punish the offender in the above regard. In the Revenue record, the suit land has

been described as forest land. So, it is stated that the suit in any case is liable to be dismissed.

5. On the above rival pleadings, the Trial Court has framed twelve issues. Issue nos.5, 6 and 9 concern with the case of the Plaintiff that the land in suit had been reclaimed by their ancestors and they have been in cultivating possession of the same since then as well as the issue as to whether the ancestors of the Plaintiffs were the tenants under the Ex-jamindar of Kujanga estate in Kujanga and as permitted by and cultivating the suit land on payment of Salami or rent etc.

Upon examination of evidence and their evaluation, the Trial Court has returned the answer negating the claim of the Plaintiffs. The other issues relating to the possession of the suit land by the Plaintiffs has also been rendered against the Plaintiffs in saying that they had failed to prove to be in continuous possession of the suit land till vesting of the estate with the State in the year, 1952. The answer has again been given against the Plaintiffs that the suit land has been included in the protected forest for declaration of reserve forest by the notification published in the official Gazette of the State government. With all these, the Trial Court has dismissed the suit. The First Appellate Court being moved by the unsuccessful Plaintiffs, the move has failed.

6. In course argument, Mr. R.N. Behera, learned Counsel for the Appellants being asked very pertinent question as to whether all the Plaintiffs belong to one family and their ancestors was common; failed to answer the same. He however submitted that out of 64 nos. of Plaintiffs, the surname of some of them are 'Tarai', some of are 'Parida', some are 'Barik' and few are having the surname as 'Nayak'. In the entire plaint, which has undergone several amendments before the Trial Court is silent on the score as to whether the Plaintiffs are the descendants of common ancestor and by pleading that their ancestors had reclaimed the suit land whether they mean one or numerous being the common ancestor of their respective family. When this has not been clarified, it is not understood as to how these Plaintiffs coming from different family, as is seen from their very surnames and when they do not state as to their inter se relationship, the present suit claiming the reliefs can be maintained as it is wholly bad not only mis-joinder of parties but mis-joinder of causes of action. All the Plaintiffs cannot join together to seeking this common relief of declaration that they are the occupancy raiyats over the suit land. That apart it being not; pleaded as to which of the Plaintiff/ Plaintiffs are in possession of which portions of the land measuring Ac.34.78 decimals and as such they are so possessing the same as occupancy raiyat; the suit is bad for its

vagueness. This fundamental aspect shaking the very foundation of the suit having not been touched upon by the Courts below which have however dismissed the suit on other findings; this Court has all the power to rule upon the impact of such grave legal deficiencies in the very suit with the prayer as has been advanced therein touching upon its foundation. This Court finds that the suit itself in the present form as constituted and for the reliefs claimed is not at all maintainable.

When the aforesaid suit is bound to fail; the Court below having non-suited the Plaintiffs although on answering the issues as already stated, this Court is of the view that the Appeal does not merit admission to answer any substantial question of law.

7. In the result, the Appeal stands dismissed. There shall however be no order as to cost.

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

Narayan