A.F.R.

IN THE HIGH COURT OF ORISSA AT CUTTACK

S.A No.182 of 1989
CNR No. ODHC010001171989

(In the matter of an Appeal under Section 100 of the Code of Civil Procedure, 1908 assailing the judgment dated 07.02.1989 and decree dated 22.02.1989 passed by the learned District Judge, Bolangir in Title Appeal Nos.35 of 1986 reversing the judgment dated 16.09.1986 and decree dated 23.09.1986 passed by the learned Additional Munsif, Bolangir in Title Suit No.17/9 of 1979-86)

Kishore Chandra Sai (dead) .... Appellant (s)
Represented by his L.Rs. 1(a) to 1(e)

-versus-

Kumari Nag (dead) .... Respondent (s)
Represented by her L.R.1(a) and Ors.

Advocates appeared in the case through Hybrid Mode**:**

For Appellant (s) : Mr. H.S. Mishra, Adv.

For Respondent (s) : Mr. P.K. Ray, Adv.

CORAM:
HON'BLE DR. JUSTICE SANJEEB K PANIGRAHI

DATE OF HEARING:-07.09.2026
DATE OF JUDGMENT:-30.10.2026

Dr. Sanjeeb K Panigrahi, J.

1. This Second Appeal is directed against the judgment dated 07.02.1989 and decree dated 22.02.1989 passed by the learned District Judge, Bolangir in Title Appeal Nos.35 of 1986 reversing the judgment dated 16.09.1986 and decree dated 23.09.1986 passed by the learned Additional Munsif, Bolangir in Title Suit No.17/9 of 1979-86 by which the suit was dismissed filed by the Plaintiffs for declaration of their title,

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confirmation of possession in the alternative recovery of possession of the suit land.

2. The deceased Appellant (Kishore Chandra Sai) was the Defendant No.5 and respondent No.5 in courts below. Respondent Nos.1 (dead) and 2 were the Plaintiffs and Appellants in courts below. The Respondent Nos.3 to 8 were the defendants and Respondents in courts below.

I. FACTUAL MATRIX OF THE CASE:

3. The brief facts of the case are as follows:

(i) The case of the plaintiffs-Respondents Nos.l and 2 is that Krupa Jal was the recorded tenant of holding No.587 of the current settlement of village- Larkipall and he died in the year 1978 leaving behind the plaintiffs and his widow as only heirs and successors. His widow has died. So, the Plaintiffs are only surviving Legal heirs of late Krupa Jal. It is further alleged by the plaintiffs in the suit that the defendants by manipulation got their names recorded in the remarks column of the record of rights and they create disturbance in the possession of the plaintiff during the current settlement.

(ii) The defendant No.5/ Appellant only appeared and contested the suit and filed his written statement contending that one Dhanu Jal was the owner of the suit lands and he sold the same to one Rajib Lochan Sai, father of the present appellant in the year 1945 for a consideration of Rs.25/- and delivered possession of the same. In evidence of the said transaction, a stamp was executed

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by Dhanu Jal. But, the said document was stolen away. The defendant/ Appellant further contended that the sale deed was produced before the Settlement Authorities and based on that document, possession was noted in the remarks column of the R.O.R. of the current settlement. On the basis of the said document, in the year 1951, also the possession of Rajib Lochan Sai was recorded in the demand list. In the partition between Rajib Lochan Sai and his brothers, the suit land fell to Rajib Lochan Sai and in subsequent partition between the sons of Rajib Lochan Sai, the suit land was allotted to the share of defendant No.5. Hence, the defendant No.5/Appellant claims that since 1945 his father was in possession of the case land and thereafter, the Appellant is in possession of the suit land in their own right, title and interest. He further pleaded that they have also acquired title by way of adverse possession.

(iii) Based on the aforesaid pleadings and matter in controversies between the parties, altogether 7 (seven) numbers of issues were framed by the learned Trial Court i.e. learned Additional Munsif, Bolangir in the suit vide Title Suit No.17/9 of 1979-86 and the said issues are:

"ISSUES

(1) Is there any cause of action for the suit?

(2) Whether the suit valued properly?

(3) Is the suit barred by limitation?

(4) Whether the defendant acquired title by adverse possession?

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(5) Is the suit non-joinder of necessary parties?

(6) Is the suit maintainable in the present form?

(7) Whether Dhanu Jal has sold the suit land for a sum of Rs.25/- by executing a stamped document to Rajib Lochan Sai and delivered possession of the same to the latter?

(iv) In order to substantiate the aforesaid relief (s) sought for by the plaintiffs in the suit vide Title Suit No.17/9 of 1979-86 against the defendants, the plaintiffs examined three witnesses from their side and exhibited the document on their behalf vide Ext.1.

(v) On the contrary, in order to defeat/nullify the suit of the plaintiffs, the defendants examined four witnesses on their behalf i.e. D.Ws.1 to 4 and exhibited documents on their behalf marked as Ext.A to Ext.E.

(vi) After conclusion of hearing and on perusal of the materials, documents and evidence available in the record, the learned Trial Court answered Issue Nos.1, 4 and 7 as Issue Nos.2, 3, 5 and 6 were not pressed and based upon the findings and observations in aforesaid issues, the learned Trial Court dismissed the suit of the plaintiffs vide Title Suit No.17/9 of 1979-86 on contest against defendant5 and ex parte against other defendants vide judgment dated 16.09.1986 and decree dated 23.09.1986 respectively and passed the order as follows:

> *"The suit of the plaintiffs is dismissed on contest against defendant no.5 and ex parte against other defendants but in the peculiar circumstances of the case without costs.*

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Advocates fees on contested scale.
Xx xx xx"

(vii) Being aggrieved by the aforesaid judgment and decree passed by the learned Trial Court in the suit vide Title Suit No.17/9 of 1979-86, the plaintiffs (present Respondent Nos.1 and 2) preferred Title Appeal No.35 of 1986 before the learned District Judge, Bolangir.

(viii) After hearing both the sides, the learned District Judge, Bolangir vide the aforesaid judgment dated 07.02.1989 and decree dated 22.02.1989 allowed the Title Appeal Nos.35 of 1986 reversing the judgment dated 16.09.1986 and decree dated 23.09.1986 passed by the learned Additional Munsif, Bolangir in Title Suit No.17/9 of 1979-86 holding that:

> *".....the land was not transferred to the appellant's father by way of sale and delivery of possession was not given. On the basis of Ext.1, it was held that Dhanu Jal is the son of Krupa Jal, although that makes no difference."*

(ix) Being aggrieved by the aforesaid judgment dated 07.02.1989 and decree dated 22.02.1989 passed by the learned District Judge, Bolangir in Title Appeal Nos.35 of 1986, the Defendant No.5 challenged the same preferring this Second Appeal being the Appellant against the plaintiffs and defendant Nos.1 to 4 and 6 arraying them as Respondents.

(x) This Second Appeal was admitted on formulation of the following substantial questions of law i.e.:-

> *"Whether the courts below are justified in law by not accepting the contents of Ext.A, C and D to prove the*

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sale in full specially when the same is not controverted by the plaintiffs in their cross-examination?

Whether the entries in the demand list Ext.A regarding transfer and possession, order in 145 Cr.P.C. proceeding Ext.B, Amin report Ext.C, partition deed Ext.D and the Ext.E, R.O.R. is sufficient in the eye of law to prove the adverse possession of the appellant against the respondent Nos.1 and 2 over the case land?"

II. SUBMISSIONS ON BEHALF OF THE APPELLANT:

4. The learned counsel for the Appellant earnestly made the following submissions in support of his contentions:

(i) Exts. A to E are proved and are public documents. The report of Amin which was prepared on the basis of enquiry conducted in course of his official duty is presumed to be correct in view of Section 114 (e) of the Evidence Act. The leamed lower appellate court erred in law in observing that the Amin had no personal knowledge. Such finding cannot be sustained in law at all.

(ii) The finding of leamed trial court based on evidence with regard to possession could not have been set aside lightly. This is in clear violation of the provisions of Order 41 Rules 3l and 32 of the Code of Civil procedure.

(iii) The record of rights produced by plaintiffs vide Ext.1 clearly indicates the possession of the Appellant. It is for the plaintiffs/ Respondent Nos.1 and 2 to establish that the same was wrong. The learned appellate court had wrongly placed the burden on the Appellant as if he is required to prove the possession and dislodge the entry.

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(iv) The learned lower appellate court has unnecessarily found out if Krupa Jai is son of Dhanu Jai, when such plea is absent in the pleadings and the finding is hit by provisions of Order 6 Rule 2 of CPC.

(v) There is clear evidence both oral and documentary about the possession of the Appellant and the finding of adverse possession by the learned trial court upon discussion of the same fully, should not have been set aside by lower appellate court.

(vi) In view of the foundation laid, the petition under Order 41 Rule 27 of the CPC needs to be allowed and if the same is taken into account, the case of the Appellant that there was a sale and was lost would be clearly established.

(vii) For the aforesaid grounds, the Second Appeal may be allowed.

III. SUBMISSIONS ON BEHALF OF THE RESPONDENT NO.1:

5. *Per contra*, the learned counsel for the Respondent No.1 earnestly made the following submissions in support of his contentions:

(i) ln the Second Appeal, out of seven substantial questions of law formulated on behalf of the Appellant- Defendants, except question No.(iv), none others can be said to have involved substantial question of law. On the said point i.e. on point No.(iv) the matter has been set at rest by the Hon'ble Apex Court in ***Raghunath and Ors. -vrs.- Hemalata Barik and Ors***.[1] and also in series of cases that basing on revenue record only

[1] MANU/OR/0512/2021 Para-8-72

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no one's legal rights can be taken away by way of adverse possession which can only be based on oral and factual possession.

(ii) The finding of the learned trial court discarding the unregistered documents along with delivery of possession having been concurrently discarded by both the courts below, and the defendants having not challenged the finding of the learned trial court before the first Appellate court, the same becomes final and any Revenue records prepared based on said documents are apparently false and fabricated, thus, has legal value. The aforesaid matter further gets support when, the Defendants have not pleaded in their written statements as to which date the said un-registered stamp paper document was executed except that the delivery of possession was given in 1945 on the basis of said document. But during the cross examination of P.W.No.1, he was suggested on behalf of Defendants that the said un-registered stamp paper document was executed in 1951, which is contrary to the evidence led on behalf of defendants that the said un-registered stamp paper document was executed in 1945 followed by delivery of possession. In course of hearing of this Second Appeal on behalf of the Appellant one Petition has been filed under Order 41 Rule 27 with affidavit, the said un-registered stamp paper document, executed in 1945 was lost hence another document acknowledging the sale was executed in 07.09.1952 by the

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original vendor. Besides, the contention in the said petition is completely different than the document filed (Annexure-A). As per decision of the Hon'ble Apex Court in ***Biswanath Prasad and Ors. Vrs. Dwaraka Prasad and Ors***.[2] the court can refer to the affidavit while deciding the case on merit. In view of the aforesaid principle of law, the contention in the affidavit regarding the missing of the so-called documents of the year 1945 and execution another document on 07.09.1952 by the original vendor, who as per the unchallenged evidence on record died in the year 1946 supports concurrent finding of both the courts discarding execution of any unregistered stamp paper documents in 1945 by Dhanu Jal in favour of Rajib Lochan ancestors of the Defendants relating to transfer of the suit land and it is only a fabricated story. Therefore, the Revenue record prepared and filed on behalf of the Defendants, based on the so-called documents, are out and out fabricated at the instance of the then defendants or their ancestors. Hence, no legal presumption can be drawn upon the same.

(iii) Regarding the factum of possession, the statement of D.W.No.4 at para-4 in cross examination to the effect that "*the plaintiff has stacked bricks on the suit land and none of the parties are in possession of the suit land five to six years prior to filing of the suit*" clearly shows that the defendants were never in continuous possession of the suit land till filing of the suit and the Plaintiff was in

[2] MANU/SC/0006/1973 in para-8

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Date: 06-Nov-2026 17:57:04

possession of the same, nor they disclosed anywhere the date when they came in possession of the suit land and since when they were in adverse possession of the same, which are the most important ingredients to claim title by way of adverse possession as per the case laws of the Hon'ble Apex Court referred to in ***Raghunath*** case (Supra), decided in ***Ram Nagina Rai and Ors. Vrs. Deo Kumor Rai and Ors***.[3], ***P.T. Munichikkanna Reddy and Ors. Vrs. Ravamma and Ors***.[4].

(iv) As per the principle of law decided in number of cases including ***Gurdev Kaur and Ors. Vrs. Kaki and Ors.***[5], the first Appellate Court being the final court of fact the same is final and there is no scope to interfere the same. Besides, on the question of transfer of the suit land both the courts below are concurrent in their findings, the finding on the question of setting aside the adverse possession is based on actual physical possession as has been discussed in submission 6(iii) in nutshell.

(v) Regarding the application filed under Order 41, Rule 27, it is submitted that the contention and title of documents both in the Petition under Order 41, Rule 27 and in the annexure there to, i.e. Annexure-A are completely different. It is filed after 47 years of filing of suit. It is not registered when valuation

[3] MANU/SC/1003/2018 Para-9
[4] MANU/SC/7325/2007 para 9-20
[5] MANU/SC/2699/2006 para-25-40

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disclosed as Rs.115/-. The contention shows that it was signed by original owner when as per the evidence on record which has also been discussed by both the courts below while discarding the transfer of the suit land in favour of Rajib Lochan. To that effect ***Srimati Haramani vrs. Srikantha and Ors***.[6] and ***Gajanand Agarwal vrs. Golakh Prasad and Ors***.[7] are referred to.

(vi) Therefore, considering the material on record relating to transfer of land in favour ancestors of the Defendants and setting aside the finding of adverse possession of the Defendants by the learned trial court over the suit land is in accordance with the fact on record and the law decided by the Hon'ble Apex Court as have been referred to above. Hence, it is prayed to dismiss the Second Appeal.

IV. FINDINGS AND DECISION OF THE LEARNED TRIAL COURT.

6. The leamed Additional Munsif, Bolangir heard the suit on merit. The leamed trial court framed seven issued and dismissed the suit of the Plaintiffs- Respondent Nos.l and 2 by holding that the suit land was not transferred by way of sale by Dhanu Jai to Rajib Lochan Sai and possession was not delivered to him as the sale deed was not produced before the court. Strangely, the learned trial court has held that Exts.A and C demand list and Amin's enquiry report do not

[6] MANU/OR/0825/2008 para 8-12
[7] MANU/OR/0122/2008 para - 7 to 10

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specifically speak about the document was ever filed before then. Leaned trial court had gone to the extent of observing that the Amin could not have reported about possession, although it is the duty of the Amin to enquire and report. However, the learned Munsif believed the plea of adverse possession of the appellant on the basis of the evidence produced by the appellant is the deed of partition Ext. D which came into existence as back as 1974, shows the possession of the suit land by the appellant's family and that the demand list prepared in 1950 prepared by the revenue authorities show that the suit land was in possession of Rajib Lochan , father of the appellant, the current R.O.R Ext.1 discloses the forcible possession. There is absolutely no material to show that the possession of the appellant and his father was interrupted by the plaintiff at any point of time. The 145 Cr.P.C. proceeding between the appellant and the plaintiffs' father in respect of the case land went in favour of the appellant and Ext. B, the copy of the order in the said proceeding is crystal clear. Accordingly, the trial court declared the adverse possession of the appellant against the plaintiffs and his title is declared and dismissed the suit filed by the plaintiffs.

V. FINDINGS AND DECISION OF THE LEARNED LOWER APPELLATE COURT.

7. The plaintiffs preferred appeal i.e. Title Appeal No.35 of 1986 before the learned District Judge, Bolangir, against the judgment in T.S. No.17/9 of 1979-86 passed by the learned Additional Munsif, Bolangir. who allowed appeal without taking into consideration of the

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contention raised by this appellant giving contradictory views. The learned 1st appellate court held that the land was not transferred to the appellant's father by way of sale and delivery of possession was not given. On the basis of Ext.l, it was held that Dhanu Jal is the son of Krupa Jal, although that makes no difference. The appellate court negatived the observations made by learned trial court based on the Exts.A and C with a perverse observation that there is nothing to show that the authorities had any knowledge in this regard. The Amin who recorded the same had no personal knowledge about the possession. With these findings the 1st Appellate Court excluded Ext.A from consideration.

8. Accordingly, the Appeal was allowed reversing the trial court's judgment.

VI. COURT'S REASONING AND ANALYSIS:

9. Heard learned counsel for the parties and perused the materials available on record. A small patch of earth in village Larkipali has kept two families in the corridors of courts for close to half a century. The suit was born in 1979. The second appeal came here in 1989. The original appellant has since passed away and so has one of the original plaintiffs. Hamlet famously laments "the law's delay" in his iconic "To be, or not to be" soliloquy (Act III, Scene I), listing it among the many miseries of mortal life that make suicide or endurance a heavy choice. Litigants in this country have learnt to live with them, though they should not have to. The least this Court can do, after so long a wait, is

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to decide the questions that truly arise, decide them on the law, and decide them without ceremony.

10. First, the jurisdictional fence erected in the form of Section 100 of the Code of Civil Procedure which does not license a second round of fact-finding. A second appeal is not a second innings on facts. The High Court does not reweigh evidence that two courts have already weighed, unless the finding rests on no evidence, ignores material evidence, admits inadmissible evidence or misreads the law that governs the evidence which have been crystalized in the authoritative pronouncement of the Supreme Court of India in ***Hero Vinoth v. Seshammal***[8]***, Gurdev Kaur v. Kaki***[9] and so on. With these limits in view, I take up the two substantial questions of law on which the appeal was admitted, and then the remaining contentions.

A. SUBSTANTIAL QUESTION NO.1: WHETHER EXTS. A, C AND D PROVE THE SALE:

11. The appellant's case starts from a sale. In 1945, he says, Dhanu Jal sold the land to his father Rajib Lochan Sai for Rs.25/- on a stamped paper and put him in possession. That paper was stolen. Since the deed cannot speak, the appellant asks the demand list (Ext.A), the Amin's report (Ext.C) and the family partition deed of 1974 (Ext.D) to speak for the same which they cannot. A sale is a transfer of ownership and it has to be roved by proving the transfer. A demand list records who is to pay the revenue. An Amin's report records what the Amin found or

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[8] *(2006) 5 SCC 545*

[9] (2007) 1 SCC 546

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was told in the course of an enquiry. A partition deed records as to how the members of a family divided among themselves what they believed was theirs. None of these documents is a conveyance and none of them was made by the person said to be the vendor. Revenue records are fiscal footprints. They show who walked across the revenue office, but they cannot show who owned the land. The Supreme Court has reiterated this so often that it has become a settled article of our property jurisprudence, entries in revenue records neither create nor extinguish title; they serve the fiscal purpose for which they are kept which has been crystalized in ***Sawarni v. Inder Kaur***[10], ***Suraj Bhan v. Financial Commissioner***[11] and so on.

12. The learned counsel for the Appellant places reliance on Section 114, Illustration (e) of the Indian Evidence Act, 1872 which permits the Court to presume that official acts have been regularly performed. The presumption, however, concerns the regularity of official procedure and does not extend to the truth of every fact recorded or represented in the course of such proceedings. It may be presumed that the Amin conducted the enquiry and prepared his report in the ordinary discharge of his official duties. But such presumption cannot establish the factum of a sale which the Amin neither witnessed nor verified by reference to any instrument of transfer. Significantly, the learned Trial Court found that neither Ext.A nor Ext.C discloses that any sale deed was produced before the revenue authorities. Thus, the very

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[10] (1996) 6 SCC 223

[11] (2007) 6 SCC 186

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documents upon which the Appellant relies are silent on the material fact sought to be established. A presumption of regularity cannot establish the proof of a transaction whose existence in the official records do not establish.

13. The Ext.D stands on even on a weaker footing. It is a deed executed in the year 1974 amongst the members of the Appellant's own family, to which the Plaintiffs were neither parties nor were they privies. A partition or arrangement amongst family members may regulate their *inter se* rights in property lawfully belonging to them but it can neither create a title where none exists nor extinguish the lawful title of a stranger. The principle embodied in the maxim *res inter alios acta alteri nocere non debet (*things done between strangers ought not to injure those who are not parties to them*)* squarely applies. Thus, Ext.D, at best, evidences an arrangement amongst its executants. It neither establishes their antecedent title to the disputed property nor binds the Plaintiffs, whose independent rights cannot be defeated by a private transaction to which they were strangers.

14. Further, the absence of cross-examination concerning these documents does not advance the Appellant's case. The principle that an unchallenged statement may be accepted relates to the credibility of testimony and does not dispense with the legal requirement of proving a fact by admissible evidence. The burden of establishing the alleged sale rested upon the Appellant, who specifically pleaded the transaction as the foundation of his claim. Yet, the sale deed, being the primary evidence of the transaction which was never produced.

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Date: 06-Nov-2026 17:57:04

Neither was any foundation laid, as contemplated under Section 65 of the Indian Evidence Act, 1872, for adducing secondary evidence of its contents. Mere production of revenue records or subsequent family documents cannot substitute proof of the alleged conveyance. The Plaintiffs were under no obligation to disprove a transaction which the Appellant had failed to establish in the first instance. The absence of cross-examination cannot cure an inherent deficiency in proof, nor can it shift the burden of establishing title from the party upon whom the law places it.

15. The Appellant's case is further weakened by material inconsistencies in his own account especially due to the alleged transaction. While the written statement asserts that the sale took place in the year 1945, followed by delivery of possession, it does not disclose the date of execution of the alleged sale deed. In the cross-examination of P.W.1, however, a suggestion was made that the document had been executed in the year 1951. Yet another version emerges from the application under Order XLI Rule 27 of the Code of Civil Procedure filed before this Court, wherein reference is made to a document dated 07.09.1952. These discrepancies are not merely incidental variations in dates but concern the very transaction upon which the Appellant based his claim of title. In the absence of the original instrument or any legally admissible evidence establishing the alleged conveyance, such shifting of versions materially undermine the credibility of his claim. Both the courts below, upon appreciation of the evidence, have disbelieved the alleged sale. Their concurrent findings are neither perverse nor based

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Date: 06-Nov-2026 17:57:04

on any misapplication of law and, therefore, warrant no interference in second appeal. Substantial Question No.1 is accordingly answered against the appellant. The courts below were justified in law in holding that Exts.A, C and D fail to prove the sale.

B. SUBSTANTIAL QUESTION NO.2: WHETHER EXTS. A TO E PROVE ADVERSE POSSESSION:

16. The plea of adverse possession is a strange plea in a legal order that respects property. It asks the court to take title from the owner and hand it to the one who has kept him out. The law grants such a prayer only grudgingly, only on strict proof, and only when time has done its slow work in the open. The possession must be *nec vi, nec clam, nec precario (*not by force, not by stealth, not by permission). It must be actual, open, continuous, hostile to the true owner and to his knowledge, for the full statutory period as held in ***Karnataka Board of Wakf v. Government of India***[12] and ***P.T. Munichikkanna Reddy v. Revamma***[13]**.** The person who pleads it must state with precision when his possession began, when did it turn adverse, and against whom. Adverse possession is a sword that may now be wielded even by a plaintiff which has been resonated in ***Ravinder Kaur Grewal v. Manjit Kaur***[14]**.** Yet, a sword it remains, and to be effective, it must possess an edge. A plea wanting in precision, particulars and proof is nothing but a blunt instrument, incapable of cutting through an otherwise established title.

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[12] (2004) 10 SCC 779

[13] (2007) 6 SCC 59

[14] ***(2019) 8 SCC 729***

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17. Tested against these settled principles, the Appellant's plea of adverse possession fails at the threshold. His principal case is that his father purchased the suit land and entered into possession as its lawful owner. Such a claim necessarily proceeds on a recognition of the vendor's title, from which the alleged purchaser seeks to derive his own. Possession asserted under a claim of purchase is thus referable to the title so claimed and does not, by itself, establish hostility towards the true owner. Although an alternative plea of adverse possession is not impermissible in law, the Appellant must independently plead and prove when and in what manner his possession became hostile to the true owner. In fact, no such foundation has been laid here. Having consistently asserted ownership by purchase, the Appellant cannot, merely upon failure to establish that purchase, convert the same possession into adverse possession without proving a distinct and unequivocal assertion of hostile title. The failure of a claim wholly based on purchase does not, by itself, mature possession into title by prescription.

18. The pleas of title by purchase and acquisition of title by adverse possession fundamentally rests on different foundations. While the former asserts ownership derived from a lawful conveyance, the latter proceeds upon hostile possession to the title of the true owner. The distinction has been explained by the Supreme Court in ***Mohan Lal v. Mirza Abdul Gaffar***[15] and ***Dagadabai v. Abbas***[16]. Although alternative

[15] (1996) 1 SCC 639

[16] (2017) 13 SCC 705

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Date: 06-Nov-2026 17:57:04

pleas are permissible in law, each must rest on clear and specific pleadings supported by evidence. In the present case, the written statement merely contains a passing assertion that the Appellant has also acquired title by adverse possession. It neither specifies when his possession became hostile to the true owner nor does it disclose any overt act by which such hostile assertion was brought to the latter's knowledge. The essential ingredients of adverse possession are thus conspicuously absent. A bare assertion of adverse possession, unsupported by the material particulars constituting it, is not a plea in the eye of law but merely a conclusion without a foundation.

19. Further, possession on paper is not possession on the soil. Adverse possession is a fact of occupation, not a fact of record. Revenue entries may corroborate actual possession that is otherwise proved but they cannot substitute for it. This is what the Supreme Court said in ***Ram Nagina Rai v. Deo Kumar Rai***[17] and what the learned counsel for Respondent No.1 contended on the strength of the other decisions he cited.

20. Further, Ext.E, the record of rights, deserves a closer look, because the appellant reads it as his strongest card. The record of rights stands in the name of Krupa Jal, the plaintiffs' predecessor as a recorded tenant. The appellant's possession finds a place only in the remarks column, and the learned trial court itself read that entry as one of forcible possessions. The statutory presumption that attaches to a finally published record of rights under Section 42 of the Odisha Survey and

[17] (2019) 13 SCC 324

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Settlement Act, 1958 runs, in favour of the recorded tenant. An entry of forcible possession in the remarks column concedes that title lies elsewhere. It records just a possessor who is not the owner. Whether that possession ripened into title is a separate question and the burden of answering it lie on the person who claimed it.

21. Ext.B, the order under Section 145 Cr.P.C., does not carry the appellant further. The jurisdiction of the Magistrate under that section is a police jurisdiction to keep the peace. It decides who was in actual possession on the relevant date, and it does so expressly "until evicted therefrom in due course of law". It decides nothing about title, and its declaration of possession yields to the decree of a civil court. At most, Ext.B shows possession on one date but Adverse possession needs proof of possession over twelve continuous years.

22. Continuity is precisely what the appellant's own witness systematically destroys. D.W.4, in paragraph 4 of his cross-examination, admitted that the plaintiffs had stacked bricks on the suit land and that none of the parties was in possession for five to six years before the suit was filed. On the appellant's own evidence, his possession was broken well before the suit was filed. Interrupted possession does not ripen into title. The clock of limitation that must run unbroken for twelve years stopped, by his own witness's account, before the suit was filed.

23. Substantial Question No.2 is accordingly answered against the appellant. The entries in Exts.A to E are not sufficient in the eye of law to prove adverse possession against Respondent Nos.1 and 2.

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Date: 06-Nov-2026 17:57:04

THE CONTENTION UNDER ORDER 41 RULES 31 AND 32 CPC:

24. The learned counsel for the appellant contends that the learned lower appellate court set aside a reasoned finding of the trial court on possession without meeting its reasons. There is some force in the complaint as a matter of craft. A first appellate court that reverses must meet the trial court's reasons and give its own. The observation that the Amin had no personal knowledge, standing alone, is not a satisfying answer to Ext.C.

25. But a flaw in the reasoning does not, by itself, entitle the appellant to a decree. Where the evidence on record is sufficient, Section 103 of the Code empowers this Court to determine the issue itself rather than send the parties back on yet another round after four decades. On the appellant's own pleadings and his own evidence, the plea of adverse possession could not have succeeded. The decree of the learned lower appellate court is therefore sustained on the reasons set out in this judgment.

THE PLEA OF WRONG BURDEN AND OF ORDER 6 RULE 2 CPC:

26. The complaint that the learned lower appellate court placed the burden on the wrong shoulders does not survive scrutiny. The burden of proving a sale squarely lies on the party who pleads the sale. The burden of proving adverse possession squarely lies on the party who claims it. Both burdens lay, by law, on the appellant. The record of rights, as seen above, does not shift either burden. It confirms them.

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Date: 06-Nov-2026 17:57:04

27. The finding that Dhanu Jal was the son of Krupa Jal may have travelled beyond the pleadings. But the learned lower appellate court itself said, in terms, that it makes no difference to the result. A finding that makes no difference causes no prejudice, and a finding that causes no prejudice raises no substantial question of law.

THE PETITION UNDER ORDER 41 RULE 27 CPC:

28. Additional evidence at the appellate stage is an exception, not a right. It may be admitted when the court below wrongly refused it, when the party could not produce it despite due diligence, or when the appellate court itself requires it to pronounce judgment which has been crystalized in ***K. Venkataramiah v. A. Seetharama Reddy***[18] and ***Union of India v. Ibrahim Uddin***[19], The rule is not a back door through which a party may repair, decades later, the gaps of his evidence left at trial.

29. The document now offered fails every test, and some tests which the rule does not even ask. It is said to be dated 07.09.1952 and executed by the original vendor. The unchallenged evidence on record is that the vendor died in 1946. A man six years already in his grave does not sign documents. The petition was filed some 47 years after the suit was instituted, with no explanation of where the document was existing all this while. Its story is not the story of the written statement, which spoke only of a document of 1945 that was stolen and said nothing of any later document. It is unregistered, though the valuation disclosed is Rs.115/-, which brings the transaction within the reach of Section 17

[18] AIR 1963 SC 1526
[19] (2012) 8 SCC 148

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of the Registration Act and Section 54 of the Transfer of Property Act. By Section 49 of the Registration Act, it cannot be treated as evidence of the transaction. As the learned counsel for Respondent No.1 rightly resonated in the strength of ***Biswanath Prasad*** (supra), the appellant's own affidavit in support of the petition contradicts the case, he set up at trial and lends support to the concurrent finding that the sale is a fabrication.

30. This Court does not require the document to pronounce judgment. It would do, if anything, cloud the judgment. The petition under Order 41 Rule 27 CPC is rejected.

VII. CONCLUSION:

31. Law can be patient with the honest litigant who lacks a document. It cannot be indulgent with a claim that changes its shape each time it is examined. The appellant's case began as a sale, became a plea of adverse possession, and ended as a document from a dead man's hand. Neither the revenue papers nor the family partition can carry the weight he places on them. The plaintiffs hold the record of title, and the appellant has failed to show that time and hostile possession took that title away.

32. Both substantial questions of law are answered against the appellant. The petition under Order 41 Rule 27 CPC is rejected. The judgment dated 07.02.1989 and decree dated 22.02.1989 passed by the learned District Judge, Bolangir in Title Appeal No.35 of 1986 are confirmed. The Second Appeal is dismissed. No order as to costs.

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33. Interim order, if any, passed earlier stands vacated.

(Dr. Sanjeeb K Panigrahi)
Judge

Orissa High Court, Cuttack,
Dated the 30th October, 2026/-

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