A.F.R.

IN THE HIGH COURT OF ORISSA AT CUTTACK

S.A. No.175 of 1989
(CNR NO-ODHC010009011989)

(In the matter of an appeal under Section 100 of the Code of Civil Procedure, 1908).

Saumitri Panda & Ors. .... ***Appellant (s)***

-versus-

Dinabandhu Mohanty (Dead) through legal heirs Mr. Pramod Kumar Mohanty & Ors. .... ***Respondent (s)***

Advocates appeared in this case through Hybrid Arrangement Mode**:**

For Appellant (s) : *Mr. B.B. Rath, Adv.*

For Respondent (s) : *M/s. Dayananda Mohapatra, Sr. Adv. along with Mr. M.R. Pradhan, Mr. J. Barik, S.K. Rout, Advs.*

CORAM:
HON'BLE DR. JUSTICE SANJEEB K PANIGRAHI

DATE OF HEARING: -08.09.2026
DATE OF JUDGMENT: -30.10.2026

Dr. Sanjeeb K Panigrahi, J.

1. The present Second Appeal arises out of a reversing judgment passed by the learned Sub-Judge, Bargarh in Title Appeal No.12 of 1987.

I. FACTUAL MATRIX:

2. The present litigation traces its origin to Title Suit No. 16 of 1982, instituted by the Plaintiff-Respondent before the learned Munsif, Bargarh, seeking declaration of his right, title and interest over the suit schedule property, confirmation of possession or, in the

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alternative, recovery thereof, together with a decree of permanent injunction against the Defendant-Appellants. The suit, having been dismissed on contest, the Plaintiff-Respondent carried the matter in appeal by instituting Title Appeal No. 12 of 1987 before the learned Sub-Judge, Bargarh. The learned First Appellate Court allowed the appeal and set aside the judgment and decree of the learned Trial Court, thereby reversing the dismissal of the suit. Aggrieved by the reversing judgment and decree of the learned First Appellate Court, the Defendant-Appellants have preferred the present Second Appeal, which has been admitted for determination of the following substantial questions of law:

> *"**7(B)** Whether the lower appellate court is justified to arrive at a conclusion that the Hamid Settlement Plot No.2607 and 2605 correspond to Major Settlement Plot No.7912 and 7911 respectively on the basis of the record of rights (Ext.3 and 4) specially when there is absolutely no evidence to hold that Major Settlement Plot No.7911 and 7912 corresponds to the suit lands claimed by the plaintiff in the suit?*
>
> ***(C)** Whether the lower appellate court is justified to hold that Ac.0.22 dec. of land purchased by the wife of defendant no.1 is quite distinct and separate from the suit land specially when the plaintiff's has purchased part plots and there is no description of the boundary of the lands purchased by him in his registered sale deed (Ext.1) and the trace map appended to the R.S.D is not being filed in court and thus there is no evidence to establish*

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that lands purchased by the plaintiff under Ext.1 relates to the suit land?

(E) *Whether the lower appellate court is justified to decree the plaintiff's suit for permanent injunction specially when there was no evidence led on behalf to the plaintiff to establish his possession over the suit land?* **"**

II. SUBMISSIONS ON BEHALF OF THE APPELLANTS:

3. Learned counsel for the Appellants made the following submissions in support of his contentions:

(i) The Plaintiff-Respondent's case, briefly stated, is that he acquired the suit land from one Narayan Das by virtue of a registered sale deed dated 08.06.1955 (Ext.1), whereupon he entered into possession thereof and has continued to possess the same ever since. In support of his claim of title and possession, he relied upon the Record of Rights standing in his name and the payment of land revenue. His grievance is that the Defendant-Appellants, despite having no right, title or interest in the suit land, began interfering with his peaceful possession from 26.02.1982, asserting ownership over a portion thereof on the strength of an alleged purchase. Such interference, coupled with the denial of his title, compelled him to institute the suit seeking appropriate relief.

(ii) The Defendant-Appellants, in their written statement, denied the plaint averments and contested the suit, setting up an independent claim of title and possession over the disputed land. Their case, in substance, is that in Hamid Settlement Plot

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No. 2607, measuring Ac. 2.82 decimals, originally stood recorded in the name of one Sundar Sahu, who, while in possession thereof, surrendered the same in favour of the then Mafidar Gountia, Smt. Jangyabati @ Janha Priya Kar. The latter, having thus acquired possession, leased out Ac. 0.22 decimals of land, including the suit land, in favour of Renuka Pandit on 16.08.1950. Renuka Pandit, in turn, sold the said land to Sairendri Panda, wife of Defendant No. 1, for a consideration of Rs. 800/- on 23.06.1960, whereafter the Defendants claim to have remained in peaceful and continuous possession thereof. They further pleaded that Hamid Settlement Plot No. 2605, measuring Ac. 1.19 decimals, stood recorded in the name of Chintamani Sahu, and that Narayan Das, through whom the Plaintiff claims title, had neither right, title nor interest in, nor possession over, the suit land.

(iii) According to the Defendant-Appellants, out of the aforesaid Ac. 0.22 decimals, they subsequently alienated Ac. 0.06 decimals from the southern portion to Judhisthir Panda and Ac. 0.05 decimals from the western portion to Haradan Hota, who, in turn, transferred the same to Rushi Bhoi. The remaining Ac. 0.11 decimals, they asserted, continued in their exclusive possession, of which Ac. 0.03 decimals was occupied by their residential house, while the balance Ac. 0.08 decimals were being used as a courtyard, kitchen garden and frontage. They further claimed to

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have erected a shed over the said land in 1964 and planted a berry tree, the fruits of which they had been enjoying ever since. Apart from asserting title through the aforesaid transactions, the Defendants alternatively pleaded acquisition of title by adverse possession. In support of their claim of possession, they relied upon Criminal Misc. Case No. 58 of 1978, initiated under Section 145 of the Code of Criminal Procedure, wherein, according to them, their possession over the disputed land had been acknowledged by the Plaintiff and found to exist in the proceeding..

(iv) While hearing the matter the learned trial Court framed the following issues for determination:-

a. Is there any cause of action to bring the suit?
b. Is the suit maintainable in its form?
c. Is the suit barred by law of limitation?
d. Whether the plaintiff's vendor Narayan Das had right, title and interest over the suit land and the plaintiff by virtue of a Registered Sale Deed dt.08.06.1955 executed by Narayan Das got right, title, interest and possession over the suit land?
e. Whether the suit land includes Ac.0.22 dec. of land that purchased by the defendants in the year 1960 from Renuka Pandit through Sayalandri Panda?
f. Whether the defendants have acquired their right over the suit land by adverse possession?
g. Whether the corresponding H.S and M.S plots of the suit lands as described in the plaint schedule are correct?
h. To what other reliefs the plaintiff is entitled to?

(v) Upon consideration of the rival pleadings and evidence on record, the learned Trial Court, having answered the issues

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framed for adjudication, dismissed Title Suit No. 16 of 1982 by judgment dated 22.06.1987 and decree dated 21.07.1987. Aggrieved thereby, the Plaintiff-Respondent preferred Title Appeal No. 12 of 1987, which came to be allowed by the learned First Appellate Court by judgment dated 02.01.1989 and decree dated 19.01.1989, thereby reversing the findings of the learned Trial Court and setting aside its judgment and decree.

(vi) Learned counsel for the Defendant-Appellants contends that the learned First Appellate Court fell into a substantial error of law in treating the registered sale deed (Ext.1), read with the Record of Rights (Exts.3 and 4), as sufficient to establish the Plaintiff-Respondent's title over the suit land, without examining the title of his vendor. He submits that it is a settled principle of law that an entry in the Record of Rights neither creates nor extinguishes title, and that a purchaser can acquire no better title than that possessed by his vendor. The learned Trial Court, upon appreciation of the evidence, had categorically found that there was no material to establish the right, title or possession of Narayan Das, the Plaintiff's vendor, over the disputed property and, consequently, that the registered sale deed dated 09.06.1955 (Ext.1) conferred no title upon the Plaintiff. In such circumstances, it is urged that the learned First Appellate Court, in holding that an inquiry into the vendor's title was unnecessary and in relying upon the revenue entries to sustain

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the Plaintiff's claim, proceeded upon an erroneous understanding of the law governing proof and derivation of title, thereby rendering its reversing judgment legally unsustainable.

(vii) Learned counsel for the Defendant-Appellants further contends that the Plaintiff-Respondent failed to establish the identity of the suit land by proving that Hamid Settlement Plot Nos. 2607 and 2605 correspond to Major Settlement Plot Nos. 7912 and 7911, respectively. He submits that the trace map appended to the Plaintiff's registered sale deed, identifying and demarcating the specific portions allegedly purchased, was not produced in evidence. The learned Trial Court, having considered this evidentiary deficiency, expressly found that the alleged correspondence between the plots under the two settlements could not be satisfactorily established. Notwithstanding such finding, the learned First Appellate Court proceeded to accept their identity without any supporting evidence. It is, therefore, submitted that the finding of the learned First Appellate Court rests on no evidentiary foundation and that the decree founded upon such an unproved identification of the suit property suffers from a substantial error of law warranting interference in Second Appeal.

(viii) Learned counsel for the Defendant-Appellants further submits that the registered sale deed (Ext.1), under which the Plaintiff-

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Respondent claims title, admittedly contains no description of the boundaries of the land conveyed, although the purchase relates only to portions of larger plots. He contends that, upon appreciation of the evidence in its entirety, the learned Trial Court specifically found that there was no material to establish that the land purchased under Ext.1 corresponded to Major Settlement Plot Nos. 7912 and 7911. Despite this fundamental deficiency in the identification of the property, the learned First Appellate Court proceeded to decree the suit principally on the strength of the Record of Rights (Exts.3 and 4), without any independent evidence connecting the land described in the sale deed with the suit property. It is, therefore, contended that the learned First Appellate Court erred in treating revenue entries as proof of the identity of the land conveyed and that its finding, resting upon an unestablished correspondence between the purchased land and the suit land, gives rise to a substantial question of law warranting interference in Second Appeal.

(ix) Learned counsel for the Defendant-Appellants further contends that it is a settled principle of law that a purchaser cannot acquire a better title than that possessed by his vendor. In the present case, there being no evidence to establish the right, title or interest of Narayan Das, the Plaintiff-Respondent's vendor, over the suit property, the registered sale deed (Ext.1) could not, by itself, confer any valid title upon the Plaintiff. He submits

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that, particularly when the vendor's title had been specifically disputed by the Defendants, the learned First Appellate Court was obliged to examine whether the vendor himself possessed a transferable interest in the property. By decreeing the suit without determining this foundational question, the learned First Appellate Court committed a substantial error of law, rendering its reversing judgment legally unsustainable.

(x) Learned counsel for the Defendant-Appellants further submits that the learned Trial Court, having found the suit land to be inadequately described and incapable of definite identification, erred in holding that the Ac. 0.22 decimals of land purchased by the wife of Defendant No. 1 under the registered sale deed (Ext.H) constituted a property distinct and separate from the suit land. He contends that the said finding, subsequently affirmed by the learned First Appellate Court, rests on no satisfactory evidence establishing the identity and boundaries of the respective properties. It is submitted that both Courts failed to consider the material evidence adduced by the Defendants concerning the location, extent and identity of the land purchased under Ext.H and proceeded to exclude the suit land from the said purchase without any reliable evidentiary foundation. Such findings, being founded upon an unproved distinction between the competing properties and reached

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without proper consideration of material evidence, are assailed as perverse and legally unsustainable.

(xi) Learned counsel for the Defendant-Appellants further contends that, in the absence of any cogent evidence establishing the Plaintiff-Respondent's possession over the suit land, the learned First Appellate Court committed a substantial error of law in granting a decree of permanent injunction against the Defendants. He submits that, without a definite finding of possession founded upon reliable evidence, the grant of such relief is legally unsustainable, particularly when the Plaintiff's title and the identity of the suit property themselves remain seriously disputed.

(xii) He, accordingly, prays for allowing the prayer made in the present Second Appeal.

III. SUBMISSIONS ON BEHALF OF THE RESPONDENTS:

4. In his opposition, learned counsel for the Respondents submits that:

i. Learned counsel for the Plaintiff-Respondent, on the other hand, submits that the Plaintiff acquired the suit land from one Narayan Das under a registered sale deed dated 08.06.1955 (Ext.1) and has remained in peaceful possession thereof ever since. His possession, it is submitted, is supported by the Record of Rights standing in his name and the continuous payment of land revenue. He further contends that the Defendant-Appellants, having no right, title or interest in the suit property,

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began interfering with the Plaintiff's possession and disputing his title from 26.02.1982 on the strength of an alleged purchase. It was this interference with his possession, coupled with the denial of his title, that gave rise to the cause of action for institution of the suit.

ii. He further contends that the Defendant-Appellants have never disputed the due execution or genuineness of the registered sale deed (Ext.1), under which the Plaintiff claims title. He submits that, the deed having remained unchallenged and the Record of Rights (Exts.3 and 4) standing in the Plaintiff's name, there was no occasion for the learned Trial Court to embark upon an independent inquiry into the title and possession of Narayan Das, the Plaintiff's vendor. According to him, the learned First Appellate Court rightly found such an inquiry unnecessary and upon consideration of Ext.1 in conjunction with the revenue records, correctly held that the registered sale deed constituted a valid conveyance of title in favour of the Plaintiff-Respondent.

iii. He further submits that the Record of Rights (Exts.3 and 4) clearly establishes that Hamid Settlement Plot Nos. 2607 and 2605 correspond to Major Settlement Plot Nos. 7912 and 7911, respectively. He contends that, once the identity of the plots under the two settlements stood established through the revenue records, no further evidence was necessary to identify the suit land. The learned Trial Court, therefore, erred in holding

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that the suit property was insufficiently described and incapable of identification. According to him, the learned First Appellate Court, upon proper appreciation of the documentary evidence, rightly reversed that finding and held that the identity of the suit land had been sufficiently established.

iv. He further submits that both Courts below have concurrently found that the Ac. 0.22 decimals of land purchased by the wife of Defendant No. 1 under the registered sale deed (Ext.H) is distinct and separate from the suit land and does not include any portion thereof. He points out that the learned Trial Court, while answering Issue No. 5, arrived at this finding upon consideration of the oral and documentary evidence adduced by the Defendants themselves, which was subsequently affirmed by the learned First Appellate Court. Such concurrent finding of fact, he contends, cannot be reopened in Second Appeal merely on a reappreciation of evidence. He further submits that, since the Defendants' claim rests substantially upon their assertion that the suit land forms part of the property conveyed under Ext.H, the concurrent finding that the two properties are distinct strikes at the very foundation of their defence and renders their claim to the suit land unsustainable.

v. He further submits that both Courts below have concurrently rejected the Defendant-Appellants' plea of acquisition of title by adverse possession. The said finding, having not been

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challenged in the present Second Appeal, has attained finality and cannot be reopened at this stage. He, therefore, contends that, with their claim of title under Ext.H having been negatived and their alternative plea of adverse possession having also failed, the Defendant-Appellants are left with no sustainable claim of title over the suit land.

vi. He further submits that the finding regarding possession recorded in Criminal Misc. Case No. 58 of 1978, a proceeding under Section 145 of the Code of Criminal Procedure, is of no conclusive significance in the present suit. He contends that proceedings under Section 145 Cr.P.C. are summary in nature and are confined to determining actual possession for the limited purpose of preventing a breach of peace, without adjudicating the competing claims of title. Any finding of possession recorded therein, therefore, neither determines proprietary rights nor does it bind the Civil Court in a substantive suit for declaration of title and consequential relief. Consequently, the Defendant-Appellants cannot rely upon the said proceeding as conclusive proof of their possession or as a ground to defeat the Plaintiff's claim of title.

vii. He further submits that the Plaintiff's claim of possession is supported by his title acquired under the registered sale deed (Ext.1), the Record of Rights (Exts.3 and 4) standing in his name and the payment of land revenue. These materials, considered

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Date: 06-Nov-2026 16:08:19

cumulatively, sufficiently establish his lawful possession over the suit land. He contends that the Defendant-Appellants, having failed to establish any right, title or interest therein, have no lawful authority to interfere with such possession. The learned First Appellate Court, therefore, upon consideration of the evidence and the competing claims of the parties, rightly granted a decree of permanent injunction protecting the Plaintiff's possession. The said finding, being founded upon the evidence on record, warrants no interference in Second Appeal.

viii. He, lastly, submits that the contentions advanced by the Defendant-Appellants essentially seek a fresh appreciation of evidence concerning the identity of the suit land, the competing claims of title and the question of possession, all of which fall within the domain of factual adjudication. He contends that the learned First Appellate Court, being the final Court of fact, has arrived at its conclusions upon consideration of the oral and documentary evidence on record, and that mere disagreement with such findings does not give rise to a substantial question of law within the meaning of Section 100 of the Code of Civil Procedure, 1908. In the absence of any perversity, misapplication of law or other legally recognised ground warranting interference, the reversing judgment and decree of the learned First Appellate Court, he submits, ought not to be

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disturbed. He accordingly prays for dismissal of the Second Appeal.

IV. FINDING OF THE TRIAL COURT AND THE LOWER APPELLATE COURT:

5. While deciding the issues noted hereinabove, the learned trial court made the following findings:-

i. While answering the issue No.4 the learned trial Court held that "since the plaintiff has failed to establish that his vendor Narayan Das has valid title in respect of the suit land, I am constrained to hold that the plaintiff has failed to establish his source of title. Consequently, I find on the strength of the registered sale deed (Ext.1) dt.9.6.55, Plaintiff-Respondent has not acquired valid title in respect of the suit land.

ii. While dealing with Issue No.5 the learned trial court found that "As such considering the oral and documentary evidence adduced on behalf of the defendants I find the suit land and the land purchased by the defendants under Ext.H are distinct and separate and the suit land is not included within the Ac.0.22 decimals of land that was purchased by the defendants in the year 1960".

iii. While deciding the Issue No.6 the learned trial court held "Accordingly, I find the defendants have not acquired title over the suit land by adverse possession.

iv. While deciding Issue no.7 the learned trial court held "I find from the oral & documentary evidence placed on behalf of the plaintiff, it is quite difficult to hold that the suit H.S. Plot No.2607 and 2605

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having an area of Ac.0.09 dec. and Ac.0.05 dec. respectively corresponding to Major Settlement Plot No.7912 and 7911 respectively.

v. On Issue Nos.1 & 2 the trial court held that in view of his finding on Issue No.4 & 7 there was no cause of action to bring the suit and the suit is not maintainable in its form.

6. Thereafter, while deciding the issues framed in the Title Appeal the learned lower Appellate Court also made the following findings:-

i. When the valid execution of Ext.1 of the vendor Narayan in favour of the plaintiff-respondent have not been challenged by the defendants and when the R.O.R's Ext.3 and 4 in respect of the suit land stand in favour of the plaintiff, the court below acted wrongly unnecessarily exercising and taking it's brain by investigating into the title and possession of the said Narayan.

ii. The findings of the court below that the suit properties are unspecific and unidentifiable cannot be tenable in the eye of law.

iii. When the portion of the said Hamid Settlement plots have been proved to be the corresponding plot nos.7912 and 7914, nothing more can be excepted from the side of the plaintiff to make his suit lands more specific.

iv. I am led to conclude that the Ext.1 is a valid sale deed and the suit lands have been well described and it is never unspecific and unidentifiable.

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vi. It must be held that Ext.H is the valid deed and the vendee concerned i.e. the wife of defendant no.1 and Chitra lekha Mishra have acquired title over their purchased lands of Ac.0.22 dec. by virtue of the same vide sale deed (Ext.H).

vii. The court below has correctly assessed the evidence of the parties and has come to a finding that the said purchase lands of Ac.0.22 dec. of the defendants are distinct and separate properties and they do not include the suit properties.

viii. I find the finding of the court below vide Issue No.6 is well bounded and correct by disbelieving the said adverse possession.

V. COURT'S REASONING AND ANALYSIS:

7. Heard learned counsel for the parties and perused the material on record. The appeal was admitted on grounds 7(B), (C) and (E) of the memorandum. Stripped of their argumentative dress, they present the following substantial questions of law:

(i) Whether the lower appellate court erred in law in holding that the Plaintiff acquired title under Ext.1. It reached that view without examining the vendor's title, which the Defendants had put squarely in issue, and it relied on the record of rights (Ext.3 and Ext.4) as proof of title.

(ii) Whether the lower appellate court's finding that Hamid Settlement Plot Nos.2607 and 2605 correspond to Major Settlement Plot Nos.7912 and 7911, and that the suit land is identifiable, rests on no legal evidence.

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(iii) Whether the finding that the Ac.0.22 decimals purchased under Ext.H is distinct from the suit land can sustain a decree in the Plaintiff's favour, when the suit land itself was never located on the ground.

(iv) Whether the decree for permanent injunction could be granted without proof of the Plaintiff's possession over an identified parcel on the date of the suit.

8. A Second Appeal is no third round on facts. Section 100 of the Code of Civil Procedure, 1908 confines this Court to substantial questions of law. That restraint, however, has limits. The jurisdiction of the High Court under Section 100 CPC does not extend to a fresh appreciation of evidence merely because another view of the facts is possible. Yet, a finding of fact is not immune from scrutiny where the process by which it was reached is itself legally flawed. If a finding rests on no evidence, overlooks material evidence, proceeds upon an erroneous application of law, or wrongly places the burden of proof, it may give rise to a substantial question of law. The Supreme Court, in ***Hero Vinoth (Minor) v. Seshammal***[1]**,** has explained that even a finding ostensibly based on evidence may be treated as one based on no evidence where the evidence, taken as a whole, is not reasonably capable of supporting it. The distinction, therefore, is between a finding that may be factually debatable and one that is legally unsustainable. Section 100 CPC permits interference with the latter,

[1] ***(2006) 5 SCC 545***

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but not merely with the former. Fact-finding that has lost its moorings in the evidence does not acquire immunity merely because it wears the label of fact.

9. A further obligation rests upon the First Appellate Court when it reverses a judgment of the Trial Court, as the final Court of fact, it is undoubtedly competent to reassess the evidence and arrive at independent conclusions. Such power, however, carries with it a corresponding duty to examine the reasons which persuaded the Trial Court to reach a contrary conclusion and to demonstrate, through a reasoned appreciation of the evidence as to why those reasons cannot be sustained. A judgment of reversal must engage with, and not merely displace, the findings it seeks to overturn. The Supreme Court, in ***Santosh Hazari v. Purushottam Tiwari***[2]**,** has emphasised this obligation. In the present case, the learned Trial Court dismissed the suit principally on two independent grounds that is the Plaintiff's failure to establish his vendor's title under Issue No. 4 and his failure to establish the identity of the suit land under Issue No. 7. The sustainability of the impugned reversing judgment must, therefore, be examined in the light of whether the learned First Appellate Court has adequately addressed and displaced both these findings by cogent reasons founded upon the evidence on record.

10. Further, the questions raised are purely factual and, therefore, beyond the scope of Section 100 CPC which cannot be accepted

[2] (2001) 3 SCC 179

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without examining the nature of the errors alleged. Had the learned First Appellate Court, upon a proper appreciation of the evidence, merely preferred one reasonably possible view over another, its findings would ordinarily have remained beyond interference in Second Appeal. The infirmity here, however, lies deeper. The learned First Appellate Court proceeded on the premise that the due execution of a registered sale deed sufficiently established the vendor's title, treated entries in the Record of Rights as proof of ownership, and accepted the identity of the suit land without identifying any reliable evidence connecting the property conveyed under the sale deed with the land claimed in the suit. These are not mere errors in the appreciation of evidence, but errors concerning the legal requirements for establishing title and identifying immovable property. The distinction is fundamental, while an erroneous inference from evidence may remain within the province of factual adjudication, a conclusion based on an incorrect legal premise or unsupported by evidence is amenable to scrutiny under Section 100 CPC. The impugned findings, therefore, cannot claim immunity merely because they were rendered by the final Court of fact.

A. **Question (i): Execution of the deed and title of the vendor:**

The lower appellate court reasoned that since the Defendants did not challenge the valid execution of Ext.1, the trial court needlessly exercised its brain over the title of Narayan Das. With respect, the reasoning confuses two distinct things. Execution answers whether

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the vendor signed and registered the deed. Title answers whether the vendor had anything to convey. A deed is a vehicle of transfer. It carries only the interest that its maker possessed. Section 8 of the Transfer of Property Act, 1882 passes to the transferee all the interest which the transferor is then capable of passing, and nothing more. The ancient maxim *nemo dat quod non habet* expresses the same truth. A purchaser stands in the shoes of his vendor. If those shoes are empty, the purchaser stands on nothing.

11. The defence of the Defendant-Appellants was not one of mere denial, rather hey specifically challenged the right, title, interest and possession of Narayan Das, the Plaintiff's vendor, and asserted an independent chain of title through Sundar Sahu, the Mafidar Gountia and Renuka Pandit. It was against this backdrop that the learned Trial Court framed Issue No. 4 concerning the vendor's title and the validity of the Plaintiff's acquisition under Ext.1. Once the very source of the Plaintiff's title was disputed, the question whether his vendor possessed any transferable interest became fundamental to the adjudication. An undisputed sale deed may establish the execution of a conveyance, but not necessarily the title of the person executing it. A vendor can convey no better title than he possesses. The learned First Appellate Court, therefore, fell into a legal error in treating the absence of a challenge to the execution of Ext.1 as dispensing with the necessity of examining the vendor's title. In doing so, it answered Issue No. 4 without resolving the very controversy that lay at its heart.

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12. It is well settled that revenue and settlement entries, being primarily maintained for fiscal purposes, neither create nor extinguish title to immovable property. The Supreme Court, in ***Suraj Bhan v. Financial Commissioner***[3]***,*** has reiterated this principle as follows:

> *"It is well settled that an entry in Revenue Records does not confer title on a person whose name appears in Record of Rights. It is settled law that entries in the Revenue Records or Jamabandi have only 'fiscal purpose' i.e. payment of land-revenue, and no ownership is conferred on the basis of such entries. So far as title to the property is concerned, it can only be decided by a competent Civil Court (vide Jattu Ram v. Hakam Singh and Ors., AIR 1994 SC 1653)"*

13. Although a finally published Record of Rights under the Odisha Survey and Settlement Act, 1958 carries a statutory presumption of correctness, such presumption is rebuttable and extends only to the matters recorded therein. It does not, by itself, establish the proprietary title of the person in whose favour the entry stands. More importantly, an entry made during a subsequent settlement cannot retrospectively establish that Narayan Das possessed a valid and transferable title to the suit land in 1955. Equally, it cannot, without supporting evidence, establish that the land recorded under the Major Settlement is identical to the property conveyed under Ext.1. The learned First Appellate Court, therefore, erred in treating the revenue entries as sufficient to bridge two distinct evidentiary gaps: the absence of proof of the vendor's title and the failure to establish the

[3] (2007) 6 SCC 186

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identity of the land conveyed. A presumption arising from a revenue entry cannot be enlarged into proof of matters which the entry neither records nor establishes.

14. The burden lay throughout on the Plaintiff. Under Sections 101 and 102 of the Indian Evidence Act, 1872, which governed the trial, the party who asserts a fact must prove it. A plaintiff who seeks a declaration of title must succeed on the strength of his own title and gains nothing from the weakness of the defence. The Supreme Court in ***Union of India v. Vasavi Co-operative Housing Society Ltd***[4]., restated this. In the said decision, the Court cautioned that revenue entries are no substitute for the proof of title. The trial court found that no evidence could be established pertaining to Narayan Das's title or possession. The lower appellate court did not disturb that finding on the evidence. It simply declared the question irrelevant. That is nothing but a misdirection in law. Question (i) is answered in favour of the Appellants.

B. Question (ii): Identity of the suit land:

15. Land, unlike a chattel, cannot be handed across the counter. Before a court declares a man's title to land, it must know where on the earth that land lies. For that reason, Order VII Rule 3 of the Code requires a plaint concerning immovable property to describe it sufficiently to identify it. The plaint may do so by boundaries or by survey numbers.

[4] (2014) 2 SCC 269

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A decree over land that cannot be located is a decree in the air. It invites a fresh dispute at the stage of execution.

16. The difficulty in this case is acute. Ext.1 conveys portions of Hamid Settlement Plot Nos.2607 and 2605. According to the Defendants, these are large plots of Ac.2.82 decimals and Ac.1.19 decimals. The suit claims only Ac.0.09 decimals and Ac.0.05 decimals out of them. The deed does not describe the boundaries of the portions sold. The trace map said to be appended to it, which alone could show which slice of the larger plots passed to the Plaintiff, was not produced. When a purchaser buys a fragment of a large plot, the fragment has no identity apart from the boundaries or the map that defines it. Without either, the deed tells the court how much was sold and is completely silent about the portion.

17. The lower appellate court bridged this gap with the record of rights. It is held that once the Hamid Settlement plots were "proved" to correspond to the Major Settlement plots, nothing more could be expected of the Plaintiff. The reasoning is nothing but circular. Ext.3 and Ext.4 show that certain Major Settlement plots stand recorded in the Plaintiff's name. They do not show that those plots are the very portions conveyed by Ext.1. The link between the deed and the settlement record is the fact in issue. The lower appellate court assumed that link and then treated it as proved. It also left unanswered, the trial court's reasoning on Issue No.7, which had examined the oral and documentary evidence and found the

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correspondence unproved. Its own finding refers in one place to Plot Nos.7912 and 7914, which reflects the want of care with which the question was approached.

18. A finding on the identity of land that rests on no evidence linking the deed to the ground is a finding on no evidence. It raises a substantial question of law. Question (ii) is answered in favour of the Appellants

C. Question (iii): The distinctness of the land under Ext.H:

19. Both Courts below have found that the Ac. 0.22 decimals of land purchased by the wife of Defendant No. 1 under Ext.H is distinct from the suit land. The Plaintiff-Respondent relies upon this concurrent finding to resist interference in Second Appeal. The contention, however, overlooks a fundamental distinction. A finding that the Defendants' purchased land is separate from the suit property does not, by itself, establish either the Plaintiff's title or the identity of the land conveyed under Ext.1. The failure of one party to establish its claim cannot relieve the other party of the burden of proving its own. The concurrent finding, therefore, even if accepted, cannot fill up the missing foundation of the Plaintiff's title or cure the deficiencies in the identification of the suit land.

20. A finding that two parcels of land are distinct necessarily presupposes that their respective identities and locations have been satisfactorily established. In the present case, however, the learned Trial Court expressly found the suit land to be insufficiently described and incapable of definite identification. Viewed against that finding,

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its conclusion that the property conveyed under Ext.H was distinct from the suit land could, at best, signify that the Defendants had failed to establish that the disputed land formed part of their purchase. Such a negative finding cannot, by itself, establish the identity or location of the land claimed by the Plaintiff. The failure to prove that the suit land falls within Ext.H is not proof that it falls within Ext.1. The distinction is fundamental, for the absence of proof supporting the Defendants' claim cannot substitute for affirmative evidence identifying the property claimed by the Plaintiff. The concurrent finding of distinctness, therefore, does not resolve the question of identification upon which the Plaintiff's claim substantially depends.

21. The finding, at best, negatives the Defendant-Appellants' claim that the suit land forms an integral part of their purchase under Ext.H, it does not, by itself, establish any right or title in favour of the Plaintiff-Respondent. It is a settled principle that a plaintiff seeking declaration of title must succeed on the strength of his own case and not upon the weakness of his adversary's claim. The failure of the Defendants to establish their title cannot dispense with the Plaintiff's obligation to prove his own. Even accepting the concurrent finding in its entirety, the two fundamental deficiencies identified by the learned Trial Court remain unanswered, namely, the absence of proof of the Plaintiff's vendor's title and the failure to establish the identity of the suit land. The learned First Appellate Court, therefore, erred in treating the

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rejection of the Defendants' competing claim as lending affirmative support to the Plaintiff's title. A finding that the Defendants have no title is not, by itself, a finding that the Plaintiff has one. Accordingly, substantial question of law No. (iii) is answered by holding that the concurrent finding concerning Ext.H, irrespective of its correctness, cannot independently sustain a decree declaring the Plaintiff's title over the suit land.

D. Question (iv): Permanent injunction:

22. An injunction protects possession. It does not create it. Where a plaintiff sues for an injunction on the basis of possession, the court must ask whether he was in possession of the identified property on the date of the suit. The Supreme Court in ***Anathula Sudhakar v. P. Buchi Reddy***[5]**,** explains the distinction between a suit for bare injunction and one that turns on title, the relevant paragraph is extracted herein below:

> *"15. There is some confusion as to in what circumstances the question of title will be directly and substantially in issue, and in what circumstances the question of title will be collaterally and incidentally in issue, in a suit for injunction simpliciter. In Vanagiri Sri Selliamman Ayyanar Uthirasomasundareswarar Temple vs. Rajanga Asari AIR 1965 Mad. 355, the Madras High Court considered an appeal arising from a suit for possession and injunction. The defendant contended that the plaintiff had filed an earlier suit for injunction which was dismissed, and therefore the plaintiff was precluded from agitating the issue of title*

[5] (2008) 4 SCC 594

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in the subsequent suit, being barred by the principle of res judicata. It was held that the earlier suit was only for an injunction (to protect the standing crop on the land) and the averments in the plaint did not give rise to any question necessitating denial of plaintiff's title by the defendant; and as the earlier suit was concerned only with a possessory right and not title, the subsequent suit was not barred. There are several decisions taking a similar view that in a suit for injunction, the question of title does not arise or would arise only incidentally or collaterally, and therefore a subsequent suit for declaration of title would not be barred. On the other hand, in Sulochana Amma vs. Narayanan Nair 1994 (2) SCC 14, this Court observed that a finding as to title given in an earlier injunction suit, can operate as res judicata in a subsequent suit for declaration of title. This was on the premises that in some suits for injunction where a finding on possession solely depended upon a finding on the issue of title, it could be said that the issue of title directly and substantially arose for consideration; and when the same issue regarding title is put in issue, in a subsequent title suit between the parties, the decision in the earlier suit for injunction may operate as res judicata. This Court observed :

> *"Shri Sukumaran further contended that the remedy of injunction is an equitable relief and in equity, the doctrine of res judicata cannot be extended to a decree of a court of limited pecuniary jurisdiction. We find no force in the contention. It is settled law that in a suit for injunction when title is in issue for the purpose of granting injunction, the issue directly and substantially arises in that suit between the parties. When the same issue is put in issue in a later suit based on title between the same parties or their privies in a subsequent suit the decree in the injunction suit equally operates as res judicata.This*

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was also reiterated in Annaimuthu Thevar v. Alagammal 2005 (6) SCC"

23. Here the Plaintiff's possession was said to flow from his title under Ext.1 and from the record of rights. Neither of them survives the analysis above. The lower appellate court recorded no independent finding of possession on the evidence. The proceeding in Criminal Misc. Case No.58 of 1978 under Section 145 of the Code of Criminal Procedure, 1973 also stands in the way. The Respondent rightly submits that an order in such a proceeding does not decide title and does not bind the civil court on that question. It remains relevant evidence of who held possession at the time. The Plaintiff had to displace it but he did not. An injunction granted to protect a possession that was never proved, over land that was never located, cannot stand. Question (iv) is answered in favour of the Appellants.

E. Whether a remand is called for?

24. A reversing judgment that fails the test in ***Santosh Hazari***[6] may ordinarily be sent back for fresh consideration. This suit, however, was instituted in 1982. The evidence is complete, and the trial court has examined it issue by issue. Section 103 of the Code empowers this Court to determine an issue of fact necessary for disposal of the appeal where the evidence on record suffices. A remand after four decades would only prolong a litigation that has already outlived many of its witnesses. The record shows no evidence that establishes

[6] **2001 (3) SCC 179**

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the vendor's title, the identity of the suit land, or the Plaintiff's possession. On that record, the trial court's conclusions are the correct ones.

VII. CONCLUSION:

25. The lower appellate court erred in law on each of the substantial questions formulated above. It treated execution as title and a revenue entry as ownership. It held a fragment of a large plot identified without the boundaries or the map that alone could define it. It granted an injunction over land whose possession and location were never proved. The judgment dated 02.01.1989 and decree dated 19.01.1989 passed in Title Appeal No.12 of 1987 by the learned Sub-Judge, Bargarh are set aside. The judgment dated 22.06.1987 and decree dated 21.07.1987 passed in Title Suit No.16 of 1982 by the learned Munsif, Bargarh are restored.

26. Accordingly, the instant Appeal is **allowed**. In the circumstances, the parties shall bear their own costs.

27. 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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