

(2024) 05 OHC CK 0098

Orissa High Court

Case No: S.A. No.01 Of 2002

Jagabandhu
Badapanda

APPELLANT

Vs

Lokanath Meswa And
Another

RESPONDENT

Date of Decision: May 7, 2024

Acts Referred:

- Code of Civil Procedure, 1908 - Section 9, 11, 100
- Orissa Consolidation of Holding and Prevention of Fragmentation of Land Act, 1972 - Section 2(g), 4, 4(4)

Hon'ble Judges: A.C. Behera, J

Bench: Single Bench

Advocate: Budhiram Das, N.C.Pati

Final Decision: Allowed

Judgement

A.C. Behera, J

1. The 2nd appeal has been preferred against the confirming judgment.
2. The appellant of this 2nd appeal was the plaintiff before the trial court in the suit vide T.S. No.03 of 1997 and he was the appellant before the 1st appellate court in the 1st appeal vide T.A. No.02 of 2000.
3. The respondents of this 2nd appeal were the defendants before the trial court in the suit vide T.S. No.03 of 1997 and they were the respondents before the 1st appellate court in the 1st appeal vide T.A. No.02 of 2000.
4. The suit of the plaintiffs vide T.S. No.03 of 1997 before the trial court was a suit for declaration and confirmation of possession, in alternative for

demolition of the structures, if the structures are made forcibly by the defendants in the suit properties during the pendency of the suit and also for

recovery of possession of the suit properties, in case the possession of the suit properties is taken away by the defendants forcibly from the plaintiff

during the pendency of the suit and also for permanent injunction against the defendants from interfering into his possession in the suit properties.

5. As per the plaint of the plaintiff, the suit properties are non-consolidable Plot No.360 Ac.0.420 decimals and non-consolidable Plot No.365 Ac.0.480

decimals under Consolidation Khata No.73.

According to him(plaintiff), he(plaintiff) is the exclusive owner and in possession over the suit properties and the suit properties covered under

Consolidation Khata No.73 has been recorded in his name exclusively. The suit properties were also recorded in his name exclusively in the 4th

settlement under Khata No.40. During consolidation operation, the defendants had claimed for recording the suit properties in their names, but, their

said claim was rejected by the consolidation authorities and ultimately final consolidation RoR of the suit properties was published in the name of the

plaintiff under Consolidation Khata No.73 after adjudicating/deciding the right, title and interest of the parties in respect of the suit properties. But, in

the final consolidation RoR of the suit properties under Khata No.73, the possession of the defendants were erroneously noted in the remarks column

of suit Plot Nos.360 and 365. In fact, the defendants were/are not in possession over any portion of the suit plots. Consolidation authorities were not

authorized under law to note the possession of the defendants in the remarks column of the consolidation RoR, in respect of the suit plots. For which,

the said noting of possession in favour of the defendants in the remarks column of the suit plots are required to be ignored for all purposes. The suit

properties are situated by the side of the road, for which, the plaintiff has been using the suit properties for multy purposes. When the defendants tried

to make construction on the suit properties forcibly by storing the building construction materials near the same, then the plaintiff objected the same,

for which, the defendants could not able to make any construction on the suit properties. The defendants have no manner of right, title and interest in

the suit properties, because, neither the plaintiff nor any of his ancestors has transferred the suit properties in favour of the defendants. When the defendants are trying to make construction over the suit properties forcibly, then, apprehending danger to the title of the plaintiff by the threat of the defendants, he (plaintiff) approached the civil court by filing the suit vide T.S. No.03 of 1997 against the defendants praying for declaration of his right, title and interest over the suit properties and to confirm his possession thereon and also to injunct the defendants permanently from interfering into his possession over the suit properties, in alternative, in case of any forcible construction by the defendants on the suit properties during the pendency of the suit, the decree for demolition of the said structures is to be passed and also for the decree for recovery of possession of the suit properties is to be passed, if, he(plaintiff) is dispossessed from the suit properties by the defendants during the pendecy of the suit along with other relief, to which, he (plaintiff) is entitled for, as the court deems fit and proper.

6. Having been noticed from the trial court in the suit vide T.S. No.03 of 1997 filed by the plaintiff, the defendants challenged the same by filing their joint written statement denying the allegations alleged by the plaintiff against them by taking their stands specifically therein that, the suit properties were originally belonged to Gokula Badpanda, who is the father of the plaintiff. The suit properties along with some other properties were allotted in favour of the plaintiff in his family settlement. When the plaintiff was minor, his father alienated the suit properties along with some other properties as a guardian of the plaintiff for the benefit of the plaintiff to one Ayojeka Rajeswar Rao by executing and registering Sale Deed No.3202 dated 24.12.1965 and its correction Deed No.238 of 1967 followed by delivery of possession. Accordingly, Ayojeka Rajeswar Rao after purchasing the suit properties from the plaintiff, he was possessing the same.

Thereafter, in order to meet his legal necessities, the said, Ayojeka Rajeswar Rao sold the suit Plot No.360, Ac.0.420 decimals to defendant no.1 through registered Sale Deed No.642 dated 30.01.1974 and delivered possession thereof. Since the date of purchase, the defendant no.1 is in possession over that Ac.0.420 decimals of suit Plot No.360 having his house and threshing floor as well as bari on the same.

Thereafter, Ayojeka Rajeswar Rao sold suit Plot No.365 to the defendant no.2 by executing and registering the Sale Deed No.644 dated 30.01.1974

and delivered possession thereof. As by the time of the purchase, the defendant no.2 was minor, for which, the father of the defendant no.2 has got

the delivery of possession of the suit Plot No.365 from Ayojeka Rajeswar Rao on behalf of minor defendant no.2. Since the date of aforesaid

purchase, i.e., since 30.01.1974, he (defendant no.2) became the exclusive owner over the suit Plot No.365 and since then, he has been possessing

that Plot No.365 by constructing his house thereon and he has been using the same as his house, bari and threshing floor. During consolidation

operation, the consolidation authorities had no power to decide the right and title of the parties in respect of the non-consolidable suit properties. As

during the consolidation operation, the defendants could not produce their sale deeds due to missing of the same, for which, consolidation authorities

recorded the suit properties erroneously in the name of the plaintiff, but, noted their possession in the remarks column of the suit plots. He (defendant

no.1) is paying the electricity dues, because, he has taken electricity connection to his house on the suit Plot No.360. So, they (defendants) have

perfected their title over the suit properties through adverse possession. Therefore, the suit of the plaintiff is liable to be dismissed against them

(defendants) with costs, because, they (defendants) have right, title, interest and possession over the suit properties and they (defendants) are the

owners of the suit properties by purchasing the same through registered Sale Deed Nos.642 and 644 dated 30.01.1974 and accordingly, they

(defendants) have perfected their title over the suit properties through adverse possession.

7. Basing upon the aforesaid pleadings and matters in controversies between the parties, altogether seven numbers of issues were framed by the trial

court in the suit vide T.S. No.03 of 1997 and the said issues are:-

ISSUES

1. Whether the plaintiff has got absolute right, title and interest over the suit land?

2. Whether the plaintiff is entitled to a decree for mandatory injunction for demolition of the structures over the suit land?

3. Whether the defendants have acquired right, title and interest over the suit land by way of adverse possession?
4. Whether the suit is grossly under-valued and court fees paid is insufficient?
5. Whether the suit is barred by law of limitation?
6. Is there any cause of action for the suit?
7. To what other relief, the plaintiff is entitled?

8. In order to substantiate the aforesaid reliefs sought for by the plaintiff in his plaint vide T.S. No.03 of 1997 against the defendants, he (plaintiff)

examined three witnesses from his side including him as P.W.1 and exhibited three documents vide Exts.1 to 3 on his behalf.

On the contrary, in order to defeat/nullify the suit of the plaintiff, the defendants examined four witnesses from their side including the defendant nos.1

and 2 as D.Ws.4 and 3 and relied upon the documents vide Exts.A to E on their behalf.

9. After conclusion of hearing and on perusal of the materials/ documents and evidence available in the record, the trial court dismissed the suit of the

plaintiff on contest against the defendants, but, without cost as per its judgment and decree dated 27.11.1999 and 16.12.1999 respectively assigning the

reasons that, they(defendants) have perfected their title over the suit properties through adverse possession, as the plaintiff is not in the possession

over the same, for which, he (plaintiff) is not entitled to get any relief in the suit against the defendants.

10. On being dissatisfied with the aforesaid judgment and decree of the dismissal of the suit of the plaintiff vide T.S. No.03 of 1997 against the

defendants passed by the trial court as per its judgment and decree on dated 27.11.1999 and 16.12.1999 respectively, he (plaintiff) challenged the

same by preferring the 1st appeal being the appellant vide T.A. No.02 of 2000 against the defendants by arraying them (defendants) as respondents.

After hearing from both the sides, the 1stst appellate court dismissed that 1st appeal vide T.A. No.02 of 2000 of the plaintiff as per its judgment and

decree dated 05.10.2001 and 17.10.2001 respectively on contest without cost concurring / accepting to the findings and observations made by the trial

court in its judgment and decree passed against the appellant/plaintiff.

11. On being aggrieved with the aforesaid judgment and decree of the dismissal of the 1st appeal of the plaintiff vide T.A. No.02 of 2000 passed by the 1st appellate court on dated 05.10.2001 and 17.10.2001 respectively, he (plaintiff) challenged the same by preferring this 2nd appeal being the appellant against the defendants by arraying them(defendants) as respondents.

12. This 2nd appeal was admitted on formulation of the following substantial questions of law :-

(i) Whether the judgment and decree passed by the trial court and 1st appellate court in dismissing the suit of the plaintiff ignoring the consolidation RoR in favour of

the plaintiff is sustainable under law?

(ii) Whether the findings and observations made by the trial court and 1st appellate court for the dismissal of the suit of the appellant(plaintiff) vide T.S. No.03 of 1997

on the ground that, the defendants have acquired their right, title and interest over the suit land by way of adverse possession is sustainable under law?

13. I have already heard from the learned counsel for the appellant (plaintiff) only, as none appeared from the side of the respondents (defendants) for the hearing of this 2nd appeal.

14. So far as the 1st formulated substantial question of law, i.e., Whether the judgment and decree passed by the trial court and the 1st appellate court in dismissing the suit of the plaintiff ignoring the consolidation RoR in favour of the defendants is sustainable under law is concerned;

It is the undisputed case of the parties that, during consolidation operation, the claim of the defendants for recording the suit properties in their favour

as the owners thereof was rejected and the claim of the plaintiff for recording the suit properties in his name as the owner of the same was accepted

and the final consolidation RoR vide Khata No.73 (Ext.3) of the suit properties was published exclusively in the name of the plaintiff. The said decision

of the consolidation authorities for recording the suit properties exclusively in the name of the plaintiff under Consolidation Khata No.73 vide Ext.3

after rejecting the claims of the defendants has not been varied/altered/set aside as yet, because that order of the consolidation authorities has not

been challenged by the defendants before any higher forums under the Orissa Consolidation of Holding and Prevention of Fragmentation of Land Act,

1972.

15. The law concerning the legal effect of the order passed by the consolidation authorities for recording the non-consolidable properties and noting of

possession in the remarks column of the consolidation RoR like this suit/appeal at hand has already been clarified by the Honâ€™ble Courts in the

ratio of the following decisions:-

(i) 2009Â (2)Â C.J.D.(HC)-71Â :Â PurnaÂ ChandraÂ Panda(dead) through his legal heirs vrs. Chaitanya Mahaprabhu Bijje Nizgaon and othersâ€™Orissa

Consolidation of Holding and Prevention of Fragmentation of Land Act, 1972â€™Sections 2(g) and 4â€™Non-consolidable landâ€™The decision taken by the

Consolidation Officer as to right, title, interest of non-consolidable land would be valid in view of amendment of Section 2(g) by Odisha Act No.2 of 1989 and the

same is applicable retrospectively. (Para-13)

(ii) 50(1980)Â CLT-337(F.B.)Â :Â SrinibasÂ JenaÂ (andÂ afterÂ him) Madhabananda Jena and others vrs. Janardan Jena and others(para-

6)â€™C.P.C.1908â€™Section 9 Civil Suitâ€™Once, the parties work out their rights before the consolidation authority and exhaust their remedies under that Act,

they cannot re-agitate the same questions over and again in the civil court, and that those questions stand finally concluded by the decision of the consolidation

authorities.

The decision of the consolidation authorities on the question of right, title and interest, which are matters within their jurisdiction would operate as res-judicata and

that being so, the civil court will have no jurisdiction to hear and decide the suit afresh.

(iii) 2021(Vol-2) CLR-645 : Gita Mishra vrs. Premananda Mishra and othersâ€™Record of Rightsâ€™ Value ofâ€™Record of right prepared and finally published

under the Orissa Consolidation and Prevention of Fragmentation of Land Act holds good for the right, title and interest in respect of the property so recorded therein

in favour of the holder of the said record of rightsâ€™Possession in respect of the suit land also stands presumed in favour of holder of the record of rights.(Para-9)

(iv) 2018(II) CLR-31 : Chhabi Bagh vrs. Saila Bagh(dead) and othersâ€™Consolidation RoRâ€™Value thereofâ€™Consolidation RoR holds good for right, title and

interest of the recorded tenant. (Para-12)

(v) 63(1987) CLT-347 : Braja Kishore Panda vrs. Damodar Rout and anotherâ€"C.P.C., 1908â€"Section 9â€"The civil court has no jurisdiction to sit in judgment

over the decisions of the consolidations authorities and declare those as without jurisdiction. Such decisions are available to be varied by the Higher Forums provided under the consolidation Act.(Para-4)

(vi) 2019(1) OLR-795 :Laxmidhar Sahu and others vrs. State of Orissa and othersâ€"OCH &PFL Act, 1972 â€"Sections 9 and 16â€"The consolidation authorities have got jurisdiction to decide the questions of right, title and interest, which would operate as res-judicata, civil court has got no jurisdiction to hear and decide the suit afresh.(Para-10)

(vii) 2007(Suppl-1) OLR-276 : Balaram Bhoi and others vrs. Babajee Bhoi and othersâ€"OCH& PFL Act, 1972â€"Right, title and interest of the land-holdersâ€"An RoR published by the consolidation authorities cannot be varied or set aside by the civil court.(Para-9)

(viii) 2003(II) OLR-16 : Mohan Biswal vrs. Sri Gopinath Dev and 6 othersâ€"Consolidation RoR prepared by the Consolidation Authority is not under challenge before any competent authority, so, said RoR has to be respected until it is found to be illegal or incorrect.

(ix) 2015(I) CLR-360 : Chintamani Kandi(dead) after him, his L.Rs. Para Dei and others vrs. Arjun Kandi and othersâ€" RoR prepared by the consolidation authorityâ€"value thereofâ€"RoR is necessary to pronounce the judgment.

Because, the consolidation authority having decided appellantâ€™s title in the suit land have recorded in the name of appellants. The title and possession through the same declares. (Para-13)

(x) 2009 (2) C.J.D.(HC)-71â€"Orissa Consolidation of Holdings and Prevention of Fragmentations of Land Act, 1972â€" Sections 4(4) and 51 forcible possession noting in RoRâ€" Effect ofâ€"The authorities under Orissa Consolidation of Holding and Prevention of Fragmentation of Land Act, 1972 are not vested with power to record forcible possession with a party while preparing land record.(Para-15)

(xi) 65(1988) CLT-440(F.B.) : Sundarmani Bewa and another vrs. Dasarath Parida (dead) and after him Labanya Dei and othersâ€"Note of possession in consolidation RoR-affect ofâ€" Noting of possession in consolidation RoR is beyond the scope of consolidation authorities. Because, the recording of title to the

properties with one person and possession with another does not serve the intent and purpose of the consolidation act and therefore, ought not to be undertaken by the consolidation authorities under that act.

The authorities under the Consolidation Act are not vested with the power to record forcible possession with a party other than the person recorded as the owner of the land while preparing land records.(Para-2)

(xii) 2019(1) CLR-950 : Laxmidhar Sahu and others vrs. State of Orissa and othersâ€"C.P.C., 1908â€"Section 9 & 11â€"Res judicataâ€"A decision of the consolidation authorities on the question of right, title and interest, which are matters within their jurisdiction would operate as res judicata and that being so, the Civil Court will have no jurisdiction to hear and decide the suit.

(xiii) 74(1992) CLT-741 : Biranchi Sahu vrs. Jujesti Sahuâ€" It was clearly laid down that, the decision of the consolidation authorities on the question of right, title and interest, which are matters within their jurisdiction would operate as res judicata and that being so, the civil court will have no jurisdiction to hear and decide the suit afresh.

(xiv) 57(1984) CLT â€" 398 : Hrudananda Panda and another vrs. Dhirendra Behura alias Beheraâ€"C.P.C.â€"Sectionâ€"Res judicataâ€"Declaration of rights and interests in land by the consolidation authoritiesâ€"Res judicata in civil court.(Para-9)

(xv) 125(2018)â€" CLT-416â€"C.P.C.,â€" 1908â€"Sectionsâ€" 9â€" andâ€" 11â€" Matter in issue was directly and substantial before consolidation authorityâ€"Held decision of the consolidation authority shall operates res judicata in the Civil Court.

Consequently, entry in the consolidation RoR, which is in favour of the appellant has rightly argued to the meaningless. Therefore, learned courts

below cannot be said to have add in deciding the suit ignoring the consolidation RoR.

16. Here in this suit/appeal at hand, when the defendants after being defeated from the competent authorities under the Consolidation Act for

recording the suit properties in their names, they(defendants) have not challenged the orders of the consolidation authorities concerning the recording

of the suit properties in favour of the plaintiff exclusively under Khata No.73 before any higher forums under the Consolidation Act, then at this

juncture, by applying the principles of law enunciated in the ratio of the aforesaid decisions, it is held that, the judgments and decrees passed by the trial court and the 1st appellate court in dismissing the suit of the plaintiff ignoring the consolidation RoR of the suit properties in favour of the plaintiff are not sustainable under law. Because, as per law and in view of the ratio of the aforesaid decisions, the finally published RoR under the Consolidation Act vide Ext.3 holds good for the right, title and interest in respect of the suit properties in favour of the plaintiff and accordingly, the possession of the plaintiff in respect of the suit properties also stands presumed. For which, the RoR of the suit properties vide Ext.3 prepared by the consolidation authorities in favour of the plaintiff cannot be varied or set aside by the civil court and the said RoR / decision of the consolidation authorities for recording the suit properties in favour of the plaintiff has operated as res judicata on the civil court and the civil court has got no jurisdiction to hear and decide the suit concerning the right, title, interest and possession of the parties over the suit properties afresh. Because in view of the ratio of the above decisions reported in 2009(2) C.J.D. 71, the decision taken by the consolidation authorities as to the right, title and interest in respect of the non-consolidable properties like the suit properties would be valid, proper and effective as per law like the consolidable properties and the consolidation authorities were/are not vested with any power under law to note the possession in favour a party other than the recorded owner thereof. For which, as per law, the noting of possession in favour of the defendants in the remarks column of the Consolidation RoR vide Ext.3 is held to be meaningless having no value thereof. Therefore, the noting of possession in favour of the defendants in the consolidation RoR vide Ext.3 has no impact on the title and possession of the plaintiff over the suit properties. For which, the said noting of possession in the remarks column of the consolidation are ignored as per law.

17. So far as the 2nd formulated substantial question of law, i.e., whether the findings and observations made by the trial court and 1st appellate court for the dismissal of the suit of the appellant(plaintiff) vide T.S. No.03 of 1997 on the ground that, the defendants have acquired their right, title and interest over the suit land by way of adverse possession is concerned;

Here in this suit/appeal at hand, as per the pleadings of the defendants, i.e., in Para nos.4, 5 and 6 of the written statement of the defendants, they

(defendants) have claimed their title over the suit properties through the registered Sale Deed bearing No.642 dated 30.01.1974 and they(defendants)

have also claimed their title over the suit properties through adverse possession simultaneously.

It is very fundamental in civil law that, the claim/plea of title over the suit properties through adverse possession by the defendants against the plaintiff

itself is an indirect admission of the defendants to the title of the plaintiff over the suit properties. Because, the defendants cannot claim their title over

the suit properties through adverse possession without admitting the title of the plaintiff on the same. Therefore, as per law, the claim of title over the

suit properties through adverse possession by the defendants like the suit/appeal at hand against the plaintiff is their indirect admission to the title of the

plaintiff over the suit properties.

18. The claim of title of the defendants over the suit properties through registered sale deed as well as through adverse possession simultaneously is

prohibited under law. Because, the above two types of claims, i.e., claim of title over the suit properties through documents as well as through adverse

possession at a time are mutually inconsistent and destructive to each other. If the above two pleas are taken by a party simultaneously, none among

the said pleas can be acceptable under law.

19. On that aspect, the propositions of law has already been clarified by the Honâ€™ble courts in the ratio of the following decisions:-

(i) 2005(3) CCC-167 (Madras) : Pappayammal vrs. Palanisamy and Ors.â€™A party can plead adverse possession, when he admits that, another party has got title.

(ii) 2008(3) CCC-173(P&H) : Jagat Singh and others vrs. Srikishan Dass and othersâ€™Once plea of adverse possession is raised, it pre-supposes the title over the

suit land of the plaintiff. The title of the plaintiff is deemed to be admitted.

(iii) 2008(4) CCC-239(P&H) : Gurubax Singh (dead) by LRs. vrs. Karnail Singhâ€™The plea of adverse possession necessarily implies the admission of the title of the plaintiff.

(iv) 2005(4) Civil Law Times-378(P&H) : Sultan and Ors. vrs. Kasturi and Ors.â€"Adverse Possessionâ€"Plea of adverse possession is indirect admission of ownership of plaintiff. (Para-8).

(v) 2006(I)â€"Civilâ€"Lawâ€"Time-86(P&H)â€" :â€" Mahinderâ€" Palâ€" and others vrs. Prem Kumar and othersâ€"Adverse Possessionâ€"Once plea of ownership based on sale-deed revised, then the plea of adverse possession would be mutually destructive and inconsistent.(Para-4)

(vi) 2006(3) CCC-234(Andhra Pradesh) : Gafoor Khan vrs. Sultan Jehan through LRs and othersâ€"Plea of title and adverse possession are mutually inconsistent and latter does not begin to operate till former is renounced.

20. In view of the ratio of the decisions referred to (supra), when the defendants are precluded under law to take the above inconsistent and mutually destructive pleas in their pleadings/written statement, then at this juncture, due to taking up of the aforesaid inconsistent pleas by the defendants, their both the pleas have become unacceptable under law.

21. As per the discussions made above, when the claim of title of the defendants over the suit properties has become unacceptable under law, then, at this juncture, by applying the principles of law enunciated in the ratio of the decisions referred to (supra), it is held that, the findings and observations made by the trial court as well as 1st appellate court regarding the dismissal of the suit of the plaintiff/appellant vide T.S. No.03 of 1997 on the ground that, the defendants have acquired their title over the suit properties by way of adverse possession cannot be sustainable under law.

22. On analysis of the facts and law, when it is held that, the plaintiff has right, title, interest and possession over the suit properties, because, after deciding the right, title, interest and possession in respect of the suit properties, the consolidation RoR vide Ext.3 has been prepared in favour of the plaintiff as per the orders of the consolidation authorities and the said orders of the consolidation authorities have not been varied/altered or set aside by any higher forums under the consolidation Act and when the claims of the defendants regarding their title and possession over the suit properties has become unacceptable under law, then at this juncture, it is held that, the plaintiff has right title interest and possession over the suit properties, but, the defendants have no right, title, interest and possession on the same.

23. Therefore, the plaintiff is entitled for the decree, i.e., declaration of his right, title, interest over the suit properties, confirmation of his possession

thereon along with the decree of permanent injunction against the defendants.

As the trial court as well as the 1st appellate court has dismissed the suit of the plaintiff vide T.S. No.03 of 1997, for which, there is justification under

law for making interference with the same through this 2nd appeal filed by the plaintiff. Therefore, there is merit in the 2nd appeal of the

appellant(plaintiff). The same must succeed.

24. In result, this 2nd appeal filed by the appellant(plaintiff) is allowed on merit, but, without cost.

25. The judgments and decrees passed by the trial court in T.S. No.03 of 1997 and the confirmation of the same by the 1st appellate court in T.A.

No.02 of 2000 are set aside.

26. The suit be and the same filed by the appellant (plaintiff) vide T.S. No.03 of 1997 is decreed on contest against the defendants, but, without cost.

The right, title and interest of the plaintiff over the suit properties are declared and his possession over the same is confirmed.

27. The defendants are permanently enjoined from interfering in the possession of the plaintiff over the suit properties.

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