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**(2011) 09 OHC CK 0009**  
**In the Orissa High Court**  
**Case No : Writ Petition (C) No. 524 of 2010**

Ashok Kumar Ray

APPELLANT

Vs

Smt. Reba Biswas and Others

RESPONDENT

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**Date of Decision :** 16-09-2011

**Acts Referred:**

Orissa Consolidation of Holdings and Prevention of Fragmentation of Land Act, 1972 —  
Section 10, 10(1), 11, 12, 13

**Citation :** (2011) 2 OLR 1017

**Hon'ble Judges :** S.K. Mishra, J

**Bench :** Single Bench

**Final Decision :** Allowed

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## Judgement

S.K. Mishra, J.—In this writ petition, the petitioners being the defendants in C.S. No. 464 of 20.08 of the Court of Civil Judge (Senior Division), Puri assails the order passed by the Court of original jurisdiction on 04.12.2009 rejecting the application filed by the defendant to pass necessary orders to the effect that the suit abates as far as the suit Schedule "C" properties of the plaint is concerned.

2. The facts leading to filing of this writ petition may be stated as follows :

Opposite parties 1 to 5 filed the suit before the learned Civil Judge (Senior Division), Puri, which has been registered as Civil Suit No.464 of 2008, for partition of lands described in Schedules A, B and C of the plaint. The defendants appeared and filed their written statement. During the pendency of the suit, an application was filed on 15.05.2009 by the defendant No.1 that out of the suit schedule properties, the properties mentioned in Schedule C situated in Mouza-Batagaon, with respect to which consolidation operation was going on under the Orissa Consolidation of Holdings and Prevention of Fragmentation of Land Act, 1972, hereinafter referred as the "Act", for brevity. It is further pleaded that the proceeding has reached at Section 18 stage of the Act. Hence, by operation of Section 4(4) of the Act, the suit shall abate. The plaintiffs filed their objection and it was taken up for disposal by the learned Civil Judge (Senior Division), Puri

on 04.12.2009. In the said order, relying upon the reported case of Somanath Bhataria Vs. Punananda Bhataria and Others, the learned Civil Judge (Senior Division) came to the conclusion that since the defendants have not raised the objection at Section 9 stage, there is no genuine ground to abate, the suit. In course of hearing, learned counsel appearing for both the parties relied upon the reported case of Somanath Bhataria v. Punananda Bhataria and others (supra).

3. Law relating to jurisdiction of the consolidation authorities and in which case the suit should abate has been set at rest by this Court in the aforesaid case. Section 9 provides for publication of records and issue of extracts and notices. Sub-section (3) of Section 9 provides that any person to whom a notice under Sub-section (2) has been issued or any other person interested may within thirty days of the receipt of the notice or of the publication under Sub-section (1), as the case may be, file before the Assistant Consolidation Officer objections on the correctness of entries in the records and the extracts furnished therefrom, or on the Statement of Principles or relating to partition. So it is the duty of the person interested, if he has any objection, has to raise such objection before the Assistant Consolidation Officer within fifteen days of publication under Sub-section (1) or under receipt of the notice Sub-sections 10 and 11 of the Act provides for disposal of objection by the Assistant Consolidation Officer and Consolidation Officer respectively. Section 12 provides for appeal, Section 14 provides for bar on objection, which reads as follows :

14. Bar on objection - Subject to the provisions contained in Section 15, no question in respect of -

(a) right, title and interest in land;

(b) partition of joint holdings, or

(c) valuation of lands, houses, structures, trees, wells and other improvements,

where the question is sought to be raised by a land-owner recorded in the land register prepared u/s 6 which question might or ought to have been raised u/s 9 but has not been raised, shall be raised or heard at any subsequent stage of the consolidation proceedings.

Section 15 provides for decision of matters relating to changes and transactions affecting right of interest recorded in revised records, which reads as follows :

15. Decision of matters relating to changes and transactions affecting right of interest recorded in revised records - (1) All matters relating to changes and transfers affecting any of the rights, title and interest recorded in the land register published u/s 13 for which cause of action arose after the publication of records u/s 9 may be raised before the Assistant Consolidation Officer as and when they arise but not later than the date of publication of the order, if any, under Sub-section (1) of Section 5 or the date of confirmation of the scheme under Sub-section (1) of Section 21, whichever is earlier :

Provided that it shall also be competent for the Assistant Consolidation Officer to consider such cases suo motu.

(2) The provisions of Sections 6 to 12 shall, mutatis mutandis. apply to the hearing and disposal of any matter raised under Sub-section (1) as if it were a matter raised under the aforesaid sections.

4. Thus, a joint reading of both the provisions leads to the logical conclusion that no question with respect to partition of the land can be raised after the publication of result u/s 9 and before the date of confirmation of the scheme under Sub-section (1) of Section 21 of the Act. Taking this aspect into consideration, the Division Bench in *M/s. Modern Fabricators, firm represented by Satyabrata Mohanty and Others v. Rajendra Harichandan and Others*, 7992 (I) OLR 322 held that the crucial question is whether the cause of action arose after publication of records u/s 9. In this case, it is undisputed that the proceeding has reached at. Section 18 stage. So Section 9 stage is over but the confirmation of scheme under Sub-section (1) of Section 21 of the Act has not been made. In paragraph 11 of the plaint, the plaintiffs have pleaded that the cause of action for this suit arose on 06.06.2008, when the plaintiffs demanded for partition and that has been turned down for the last time. In commenting upon the said paragraph, the defendant No.1 in paragraph 18 of his written statement has stated that there was never any cause of action that on 17.05.2008, all the plaintiffs had jointly tendered a letter to this defendant offering sale of their expected joint share of the property left by Late Atul Krishna Roy. It is further pleaded that the defendant's reply to them on 06.06.2008 seeking further information and documents were never responded by the plaintiffs. Thus, it appears that on 06.06.2008, the cause of action arose. The petition filed by the defendant before the trial Court does not reflect as to when Section 9 Notification was issued. So it is not possible at this stage to decide whether the cause of action arose after the Section 9 publication or before the same. In that view of the matter, this Court is of the opinion that the matter should be decided in its proper perspective by the learned Civil Judge (Senior Division), Puri taking into consideration the date of cause of action arises and date of publication of records u/s 9 of the Act. It is noted here that if the cause of action arose before the publication u/s 9, then the plaintiff cannot claim for partition before the consolidation authorities. Hence the suit will not abate. On the contrary, if the cause of action arose after the publication u/s 9, then the plaintiff can claim for partition before the Consolidation Officer, hence the suit shall abate.

5. Accordingly, the writ application is allowed in part. The impugned order dated 04.12.2009 in Annexure-6 is hereby set aside. The matter is remitted back to the trial Court for hearing the matter in the light of the observations made in this order. The parties are directed to appear in the trial Court on 21.10.2011.