

(2023) 08 OHC CK 0081

In the Orissa High Court

Case No : Writ Petition (C) No. 7135 Of 2007

Baikuntha Nath Mishra (Since Dead) Represented Through Lrs	APPELLANT
Vs	
Addl. District Magistrate Kendrapara And Others	RESPONDENT

Date of Decision : 14-08-2023

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Limitation Act, 1963 — Article 65
Orissa Survey and Settlement Act, 1958 — Section 8A, 15(b)
Transfer of Property Act, 1882 — Section 54

Citation : (2023) 08 OHC CK 0081

Hon'ble Judges : Dr. B.R. Sarangi, J; Murahari Sri Raman, J

Bench : Division Bench

Advocate : B.K. Sahoo, K.C. Sahoo, A.K. Mishra, B.B. Mishra, K.C. Samal

Final Decision : Dismissed

Judgement

Dr. B.R. Sarangi, J

1. In this writ petition, which was originally filed by Baikuntha Nath Mishra and upon whose demise his legal representatives have been stepped into his shoes by way of substitution, prayer has been made to quash the order dated 28.09.2006 passed by the Addl. District Magistrate, Kendrapara in O.E.A. (R) No. 1 of 2002 under Annexure-10 confirming the order dated 16.04.1999 passed in R.P. Misc. Case No. 37 of 1998 by the Addl. Tahasildar, Aul, which was affirmed vide order dated 17.11.2001 in Misc. (A) No. 7 of 1999 by the Sub-Collector, Kendrapara under Annexure-9 by holding that since the private opposite parties are in possession of the disputed land since 1980, the order dated 22.05.1980 passed by the Tahasildar, Aul in Tauzi Misc. Case No. 55/1978-79 reviewing the order dated 23.02.1979 has no merit as there is no provision that one Presiding Officer can review his own order after a period of one year; as well as to quash the order dated 09.12.1980 passed by the Tahasildar, Aul in Misc. Case No.217 of 1980 under Annexure-5.

2. The factual matrix of the case, in a nutshell, is that sale deed no.352 dated 23.01.1940 (Annexure-3) was executed by one Pitambar Mishra, son of Mani Mishra in favour of Syam Sundar Mishra, Benudhar Mishra and Lambodhar Mishra, transferring the land in Khata No. 150, Plot No. 54 measuring area Ac.0.23 dec. and Plot No. 55 measuring area Ac.0.21 dec., boundary:North-Road, South-Bidhyadhar Mishra. Tauzi Misc. Case No.55 of 1978-79 was initiated by opposite party no.3 to record the disputed land in their name on the basis of their sale deed no.352 dated 23.01.1940. The final order (Annexure-1) in that case was passed on 08.07.1980 by the Tahasildar, Aul holding that the disputed land was not purchased by opposite party no.3 and, therefore, under the sale deed no.352 dated 23.01.1940, no title can be passed in respect of Plot Nos. 44 and 45 under Khata No.150. Thereafter, the very same Tahasildar, at the instance of opposite party no.3, again initiated another Bebandobast Misc. Case No. 217 of 1980. In the said case, the order dated 10.11.1980 shows that both the parties are claiming their possession over the suit land on the basis of the report of the Revenue Inspector dated 08.11.1980 (Annexure-2), which shows that the private opposite parties are possessing the land and the original petitioner is enjoying the fruits. Consequentially, the Tahasildar held that Pitambar Mishra, son of Mani Mishra by way of sale deed dated 23.01.1940 had transferred the suit land, but in the deed it was wrongly mentioned Plot Nos.54 and 55 under Khata No. 150 instead of Plot Nos.44 and 45 under Khata No.158. However, the boundary given in the sale deed tallied with the land in possession of the private opposite parties, even though wrong plot numbers and khata number had been mentioned in the sale deed. Accordingly, direction was issued to assess the rent in favour of opposite party no.3 with effect from 1963-64. The order passed in Tauzi Misc. Case No.55/1978-79 has not been challenged. But against the order dated 09.12.1980 passed in Bebandobasta Misc. Case No. 217/1980, by which it has been held that the original petitioner has no right and title over the land and directed to settle the land in favour of Khetrabasi Mishra-opposite party no.3 and called upon him to deposit three times rent and distinguished the earlier order as not binding being not legal. Against the said order, the original petitioner filed OEA Appeal No.2/1981 before the Court of SDO, Kendrapara, which was dismissed vide order dated 31.03.1989. Thereafter, the original petitioner filed OEA Revision No.12 of 1989 before the Addl. District Magistrate, Kendrapara, which was also dismissed vide order dated 08.02.1996. Then, the original petitioner filed R.P. Case No. 940 of 1996 before the Commissioner, Land Records under Section 15 (b) of the Survey and Settlement Act, which was remanded to the Tahasildar, Aul to verify the entitlement of the parties. Thereafter, the Tahasildar, Aul initiated Misc. Case No. 37 of 1998 and vide order dated 08.06.1999 dismissed the same by holding that RoR has rightly been prepared in the name of opposite parties no.3 to 5. Against the said order, the original petitioner preferred Misc. (A) No.7 of 1999 and vide order dated 17.11.2001 the Sub-Collector, Kendrapara dismissed the appeal. Aggrieved thereby, the original petitioner preferred OEA (R) No. 1 of 2002 before the Addl. District Magistrate, Kendrapara and in turn the ADM dismissed the revision confirming the order

passed in Misc. Case No. 37 of 1998 dated 08.06.1999 by the Tahasildar, Aul and the order dated 17.11.2001 passed by the Sub-Collector, Aul in Misc. (A) No.7 of 1999. Hence, this writ petition.

3. Mr. B.K. Sahoo, learned counsel for the petitioners vehemently contended that the order dated 08.07.1980 passed in Tauzi Misc. Case No.55 of 1978-79 having not been challenged, it has reached its finality. But, without setting aside the said order, the very same Tahasildar in Bebandobasta Misc. Case No.217 of 1980 passed a different order in favour of the private opposite parties. It is contended that even though incomplete boundary was said to be given in the sale deed, but it has been held that the boundary has been tallied. It is further contended that Bebandobasta Misc. Case No. 217 of 1980 was initiated for fixation of rent under Section 8A of the OEA Act, which only authorizes to fix the rent in respect of the land, which is deemed to be settled and validity of the sale deed could not be decided and that there is dispute between two rival persons claiming their right of occupancy.

To substantiate his contention, learned counsel for the petitioner has relied upon the judgment of this Court in the cases of Bhagaban Kar v. State of Orissa, 2008 (II) OLR 838.

4. Mr. A.K. Mishra, learned Addl. Government Advocate appearing for the State opposite parties no.1 and 2 vehemently contended that the order was passed by the Tahasildar in Bebandobasta Misc. Case No. 217 of 1980 with regard to fixation of rent and such fixation of rent was done on the basis of the report furnished by the Revenue Inspector, wherein it was specifically mentioned that on the basis of evidence of the local gentries, who had deposed that Shyam Mishra and after his death his son was in possession of Ac.0.44 dec. of land for last 30 to 40 years. As such, the disputed land was being utilized by Shaym Mishra and after his death his son was cultivating the same. Thereby, taking into consideration the possession of the land by the private opposite parties, the Tahasildar passed order holding that as the property has been identified and delivery of the possession has been given transfer is complete as per the provisions of Transfer of Property Act, even though wrong plot numbers and khata number are mentioned in the sale deed. Had there been any instruction of the transferee not to sale the property, he would not have delivered the possession of the property and transferee would not have allowed an uninterrupted possession over the said land for such long period of nearly forty years. Besides, the boundaries given in the sale deed tallied with the land in possession of the transferee. Consequentially, determined the rent and assessed the rent in favour of the private opposite parties with effect from 1963-64 subject payment of three times rent as salami mentioning therein khata no.158 in village Silastamba, plot nos. 44 and 45, measuring area Ac.0.23 decimals and Ac.0.21 decimals in toto Ac.0.44 decimals of land and for that assessed rent 1.88 and cess 0.94 in total 2.82, and salami 5.64. Thereafter, an appeal was preferred by the original petitioner before the SDO, Kendrapara in OEA No.2/1981, which

was dismissed by confirming the order. Against the said order, the original petitioner preferred OEA Revision No.12/1989 and vide order dated 08.02.1996, the order dated 09.12.1980 passed by the Tahasildar and the order passed by the SDO, Kendrapara in OEA No.2/1981 were re-affirmed. Even subsequently, the R.P. Case No.940 of 1996 under Section 15 (b) of the Odisha Survey and Settlement Act, 1959 was filed by the petitioner and the same was remanded to the Tahasildar by the Commissioner, Survey and Settlement, vide order dated 06.12.1996 and on that basis the Addl. Tahasildar, vide order dated 08.06.1999 passed in R.P. Misc. Case No.37/1998, disallowed the mutation case arising out of R.P. case No.940 of 1996 confirming to record Mouza-Silastamba, Khata No.50, Hal Khata No.50, Plot No.49. Against the said order, Misc.Appeal No.7 of 1999 was preferred by the original petitioner before the Sub-Collector, Kendrapara, who also confirmed the order passed by the Addl. Tahasildar in R.P. Case No.37 of 1998 vide order dated 17.11.2001. Against the said order, OEA (R) No.01 of 2002 was filed by the original petitioner before the A.D.M., Kendrapara, who also re-affirmed the order passed by the Addl. Tahasildar as well as the Sub-Collector. Thereby, no illegality or irregularity has been committed by the authorities in passing the orders impugned so as to cause interference with the same.

5. Mr. B.B. Mishra, learned counsel appearing for opposite parties no.3 to 5 supported the contention raised by learned State Counsel and contended that since no illegality or irregularity has been committed by the authorities in passing the orders impugned, the same do not warrant interference of this Court. It is contended that the registered sale deed no.289 dated 08.02.1980 under Annexure-4 is ab initio void because it is well settled law that after sale, the vendor had no alienable title over that portion of the land and, as such, earlier transferee shall priority of rights over the same and subsequent sale deed is inconsequential.

To substantiate his contention, learned counsel for opposite parties no.3 to 5 has relied upon the judgments of this Court in the cases of Board of Secondary Education Orissa, Cuttack v. Joint Commissioner, Consolidation and Settlement and others, 2010 (II) OLR 685; Alekha Rajhans v. Joint Commissioner, Consolidation and others, 2013 (I) OLR 584, Babaji Dehuri v. Biranchi Ananta and others, AIR 1996 Ori 183; Jayadev Swain v. Santha Behera and others, (2006) CLR 218.

6. This Court heard Mr. B.K. Sahoo, learned counsel appearing for the petitioners; Mr. A.K. Mishra, learned Addl. Government Advocate appearing for the State opposite parties no.1 and 2; and Mr. B.B. Mishra, learned counsel appearing for opposite parties no.3 to 5 in hybrid mode and perused the records. Pleadings having been exchanged between the parties, the matter is being disposed of finally with the consent of learned counsel for the parties at the stage of admission.

7. It is not in dispute that the suit plot no.49 measuring Ac.0.20 dec. and plot

no.50 measuring Ac.0.21 dec. recorded under Hal RoR khata no.50 corresponding to sabik plot no.44 measuring Ac.0.23 dec. and sabik plot no.45 measuring Ac.0.21 dec. stood recorded under sabik khata no.158 in favour of Mani Mishra, son of Rama Mishra in the sabik RoR. The said Mani Mishra died leaving behind his son Pitambar Mishra. After the death of Pitambar Mishra, his son Damburudhar Mishra succeeded to the property through inheritance. The original petitioner had purchased the suit sabik plot from Damburudhar Mishra vide registered sale deed no.289 dated 08.02.1980 and after purchase the original petitioner was in peaceful possession over his purchased land. During hal settlement operation, the suit corresponding hal plots were wrongly recorded in favour of the private opposite parties, though the same should have been recorded in favour of the original petitioner as per his purchase. Therefore, prayer was made by the original petitioner to delete the suit hal plot no.49 and hal plot no.50 from the hal RoR no.50 and to record the same in his favour as per his purchase and to increase the area of the suit hal plot no.49 from Ac.0.20 dec. to Ac.0.23 dec. Accordingly, the original petitioner approached the Commissioner, Survey and Settlement invoking Section 15(b) of the Survey and Settlement Act and after due adjudication, the Commissioner remanded the matter back to the Tahasildar with a direction to verify the OEA settlement title of the vendor in registered sale deed no.289 dated 08.02.1980 by causing a field inquiry for the area purchased by the petitioner and by the opposite parties. The area of the suit hal plot no.49 be re-measured and the area/map/rent be corrected, if found necessary. As a consequence thereof, the Tahasildar, Aul, as per the direction of the Commissioner, Land Records and Settlement, vide order dated 06.12.1996 passed in R.P. Case No. 940 of 1996, called upon the parties to produce relevant documents. In response to the same, the original petitioner filed registered sale deed no.289 dated 08.02.1980 and the order passed in Tauzi Misc. Case No. 55/1978-79, whereas opposite parties no.3 to 5 filed registered sale deed no.352 dated 23.01.1940, Amin report of local inquiry by the settlement official, Bebandabost Misc. Case No.21/1980 and Amin report, the order passed in OEA Appeal Case No.12/1989, copy of the hal RoR khata no.50, demarcation case no.71/1993 along with Amin report and rent receipt no.252845 dated 14.01.1989 for khata no.158/3 measuring Ac.0.44 dec.

8. As it reveals from the sale deed no.289 dated 08.02.1980, the vendor is Dambarudhar Mishra, son of Pitambar Mishra and the vendee is Baikuntha Nath Mishra, son of Udayanath Mishra of village-Silastamb involving sabik khata no.158, sabik plot no.44 measuring Ac.0.23 and plot no.45 measuring Ac.0.21 dec. Referring to the order dated 20.03.1979 in Touzi Misc. Case No.55/1978-79, the Tahasildar, Aul has settled the sabik plot no.44 measuring Ac.0.23 and plot no.45 measuring Ac.0.21 dec. appertaining to sabik khata no.158 in favour of Khetrabasi Mishra, son of Shyam Sundar Mishra of village-Silastamba and directed that after the appeal period is over, intimation slip shall be sent to R.I. concerned for correction of record and realization of rent. But the original petitioner Baikuntha Nath Mishra filed a petition before the S.D.O., Kendrapara

which was sent to the Tahasildar, Aul. On the strength of that petition, the Tahasildar, Aul reopened the case on 04.04.1980 and issued notice to both the parties. The Tahasildar, Aul in his order dated 08.07.1980 reviewed the order of his predecessor and held that the title cannot pass to Khetrabasi Mishra under the sale deed and, as such, the order passed was reviewed and thereby cancelled the previous settlement order.

9. Furthermore, on verification of the sale deed no.352 dated 23.01.1940, it is seen that the vendor is Pitamber Mishra, son of Mani Mishra of village Silastamba and the vedees are Shyam Mishra, Bamadev Mishra and Lambodar Mishra, sons of Damodar Mishra of village-Silastamba involving sabik khata no.150, sabik plot no.54 measuring Ac.0.23 dec. and sabik plot no.55 measuring Ac.0.21 dec. The opposite parties also produced certified copy of the order passed in Bebandabasta Misc. Case No.217 of 1980 and on examination of the same, the Tahasildar settled the sabik plot no.44 measuring Ac.0.23 and sabik plot no.45 measuring Ac.0.21 appertaining to khata no.158 of village-Silastamba in favour of Khetrabasi Mishra, son of Shyam Sundar Mishra vide order dated 09.12.201980 and directed the office to put up the case record after the appeal period is over for issue of intimation slip to the R.I. concerned. Against the order dated 09.12.1980, the original petitioner-Baikuntha Nath Mishra preferred appeal in the court of Sub-Divisional Officer, Kendrapara being Appeal Case No.2/1981 and the appeal was contested by both the parties. The Sub-Divisional Officer, Kendrapara, vide order dated 31.03.1989, upheld and confirmed the order of the Tahasildar, Aul. Aggrieved by the order of the SDO, Kendrapara in Appeal Case No.2/1981, the original petitioner-Baikuntha Nath Mishra preferred a revision case before the ADM, Kendrapara being Revision Case No.12/1989 and in turn the ADM rejected the revision. The prayer of the original petitioner was for correction of the area of hal plot no.49 from Ac.020 dec. to Ac.0.23 dec. Therefore, as per the direction of the revisional authority, Amin was directed to conduct field enquiry and report about the possession along with sabik hal trace map. Pursuant thereto, the Amin submitted his report wherein stating therein that though the area of sabik plot no.44 was recorded Ac.0.23 dec., but whole extracting the area in the sabik map, it comes to Ac.0.20 dec. instead of Ac.0.23. As such, there is no reason to enhance the area of hal plot no.49 from Ac.0.20 dec. to Ac.0.23 dec., as there is no area in the sabik map and in the field. Hence, the finally published area of plot no.49 measuring Ac.0.20 dec. was kept intact.

10. The opposite party no.3-Khetrabasi Mishra filed a petition for demarcation of hal plot nos.49 and 50 appertaining to hal khata no.50 of village-Silastamba. The said petition was registered as Demarcation Case No.71/1990, where the Amin was directed to demarcate the suit plots in the field and submit his report along with the sketch map. The Amin report disclosed that the original petitioner did not receive the notice and also remained absent at the time of demarcation. Moreover, the opposite party no.3 filed rent receipt no.252845 dated 14.01.1989, from which it was revealed that there was realization of cess for khata no.158/3 for an area measuring Ac.0.44 dec.

11. In the above backdrop of the case, since the fact finding courts have already held that the private opposite parties are in possession of the disputed property from 1940 onwards, at the behest of the petitioners, now the same cannot be altered. If the petitioners claim for a declaration of right, title and possession over the property in question, with regard to the findings given by the reviewing courts, as mentioned above, they should have approached the competent civil court by filing a suit for declaration of right, title and possession. More so, if the petitioners want to make any correction or rectification of the sale deed, they should have approached the appropriate forum within three years of execution of the sale deed, as required under Article 65 of the Limitation Act that suit for declaration of right, title and possession should be filed within a period of three years. As such, the said period has already over by this time.

12. In Babaji Dehuri (supra), taking into consideration various judgment of the apex Court, this Court came to a conclusion that suit for declaration of title and possession should have been filed within three years, as required under Article 65 of the Limitation Act.

13. No doubt, in Board of Secondary Education, Orissa, Cuttack (supra), this Court held that as per the provision contained in Section 15 (b) of the Orissa Survey and Settlement Act, 1958, even after expiry of one year, revision can be maintained, and that it is not necessary for the petitioner to show sufficient cause for filing the revision petition after expiry of the limitation period. There is no dispute before this Court in the present case that the original petitioner had invoked jurisdiction under Section 15 (b) of the Act and question of limitation has not been raised in this case. Rather parties had appeared before the Settlement Commissioner, who, exercised its jurisdiction under Section 15 (b) of the Act and after due adjudication remanded the matter to the Tahasildar, before whom the parties participated in the proceeding. As such, the original petitioner had lost in R.P. case as well as in appeal and thereafter in revision, which is the subject matter of consideration before this Court in the present proceeding. But fact remains, since there are concurrent findings by the fact finding courts, this Court is not inclined to interfere with the findings of the fact finding courts and, as such, this Court is not inclined to exercise the power under Articles 226 and 227 of the Constitution of India to issue writ of certiorari to unsettle the settled position, which is not permissible.

14. In Alekh Rajhans (supra), this Court already held that under Section 54 of the Transfer of Property Act, 1882 the vendor has no subsisting right to convey in favour of subsequent purchaser, after executing and registering the sale deed earlier and, as such, the subsequent sale deed is inconsequential.

15. In Hay v. Gordon, (1872) LR 4 PC 337, it was held that it is general rule of practice on appeals in the Privy Council not to reverse the concurrent findings of two Courts on a question of fact.

16. The aforesaid principle is still continuing. Therefore, keeping in view the

concurrent findings arrived at by the fact finding courts, this Court is not inclined to disturb such findings in exercise of extra-ordinary jurisdiction of this Court.

17. Much reliance was placed by the petitioners on the judgment of this Court in the case of Bhagaban Kar (supra). But on perusal of the said case, it would be evident that the said case has no nexus to the present case and, as such, the same is not applicable to the present case, because in the said case this Court held that a tenant cannot claim settlement of land in his favour under the Odisha Estate Abolition Act, 1951, as he is only to be recognized as a tenant under the State. This is the settled principles of law. Thereby, the applicability of the said case to the facts and circumstances of present case does not arise.

18. In view of the facts and law, as discussed above, this Court is of the considered view that the writ petition merits no consideration. Accordingly, the same stands dismissed. However, there shall be no order as to costs.

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