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**(1987) 04 OHC CK 0009**  
**In the Orissa High Court**  
**Case No : First Appeal No. 207 of 1973**

Bira Majhi and Others

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

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**Date of Decision :** 16-04-1987

**Acts Referred:**

Forest Act, 1927 — Section 2, 3, 3(1), 4(1)

**Citation :** (1981) 64 CLT 41

**Hon'ble Judges :** L. Rath, J

**Bench :** Single Bench

**Advocate :** B.B. Mohanty, for the Appellant; S.K. Das, Additional Standing Counsel, for the Respondent

**Final Decision :** Allowed

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## Judgement

L. Rath, J.—The Plaintiffs are in appeal against dismissal of their suit brought for declaration of right over the schedule 'A' lands as also for confirmation of possession. The averments in the plaint are that an area of A.14.30 decimals of land had been leased to the original lessees by the Ex-Zamindar of Kujang in the year 1950-51. The estate vested on 27-11-1952 and rent roll was submitted in favour of the lessees by the Zamindar, and rent was also accepted from the lessees by the Anchal in respect of the entire land vide Exts. 3 and 4. While rent had been so accepted, yet in the R. O. R. published in 1966 they were shown as sthitiban tenants only in respect of 5.32 decimals as in Ext. 6 (schedule B lands of the plaint). Plaintiff Nos. 1, 2 and 3 had purchased on 1.5-1967, 8.98 decimals of land vide Ext. 8 i.e., the lands excluding the 5.32 decimals in respect of which the lessees were shown as sthitiban tenants. On the same day the Plaintiff Nos. 1, 2 and 3 also purchased the schedule 'B' lands from the lessees vide Ext. 9 and thus they became 16/annas owner of the entire land. Thereafter, on 4-6-1970 the Plaintiff Nos. 1, 2 and 3 sold 1/4th of the schedule 'B' land to the Plaintiff No. 4.

2. Admittedly, there is no dispute in the suit relating to the schedule 'B' lands

and hence as conceded by Mr. Mohanty, the learned Counsel appearing for the Appellants, the presence of Plaintiff No. 4 as a party in the suit does not appear to be necessary. The dispute in the suit relates to only schedule 'A' lands, i.e., 8.98 decimals which has been shown as Rakhit Anabadi in plot No. 40 vide Ext. 30-A 3. The suit was contested by the State of Orissa and Ors. contending inter alia that the original lease granted by the Ex-Zamindar of Kujang, i.e. Raja of Burdhan was void being in violation of the provisions of Section 3 (1) of Act 1 of 1948 which prohibited any such lease without previous sanction of the Collector. The learned Second Additional Subordinate Judge. Cuttack who heard the suit accepted such contention of the Respondents and without going into the merits of the case dismissed the suit on the preliminary point of the lease in favour of the original lessees being void u/s 4 (1) of Act 1 of 1948. Being aggrieved by such judgment, the Plaintiffs have preferred this appeal.

4. It is urged by Mr. Mohanty, that firstly the provisions of Act 1 of 1948 are not applicable to the land in question and hence the mischief of Section 3 would not be attracted to the lease and secondly, even if the previous sanction of the Collector was necessary such sanction was there.

So far as the first point is concerned, he relies on the definition of the 'forest land' in Section 2 (c) of the Act which may be extracted:

## 2. Definitions:

In this Act, unless there is anything repugnant in the subject or context.

xx xx xx (c) 'Forest land' includes any waste land containing shrubs and trees and any other class of land declared to be forest land by a notification of the (State) Government;

xx xx xx

It is urged that since there is no notification declaring the disputed lands to be the forest land by the State Government, the bar contained u/s 3 of the Act would not be applicable. However, as has been rightly pointed out by the learned Additional Standing Counsel appearing for the Respondents and also agreed to by Mr. Mohanty, the definition is an inclusive one and the notification contemplated thereunder only applies to such other class of lands which may be declared to be forest lands. In other words, the notification -to be made by the State Government merely intends to bring other class of lands to be included as forest lands but however does not control the forest lands which exists as such. The words 'Forest land' has also not been defined in the Indian Forest Act and hence meaning of it has to be gathered from dictionary. In 20th Century Chambers dictionary the meaning of 'Forest' is shown as a large uncultivated tract of land covered with trees and under wood. Undoubtedly, land with such growth would be forest land. It appears from all the evidence led by the Appellants in the depositions of P.Ws. 1 to 6 that the land in question is jungle land and p.w. 3 also specifically admitted the land to be forest land. There thus

cannot be any denying of the effect that the land is unquestionably the forest land and could not have been leased out without previous sanction of the Collector and that such lease if made without the previous sanction of the Collector, is void under the provisions of Section 4 of the Act. As such no exception can be taken to the judgment of the learned Subordinate Judge on that count.

5. Mr. Mohanty urging the second point contends relying upon the Collector. *Cuttack v. Shri Atul Chandra Das and Anr.* (1972) C.L.T. 106): 97 1972 (II) C. W. R. 1104, that there was a general permission granted to the Maharaja of Burdhan by the Collector in Misc. Case No. 399 of 1949-50 granting permission to lease out jungle lands to the tenants for the purpose of reclamation and rendering such leasehold lands fit for cultivation. The statement of such fact appears in the reported judgment. However, the fact appearing in the judgment of that case would not ipso facto be evidence in the present suit it being not a judgment in rem but being a judgment in personem and hence no reliance can be drawn from the judgment by the Appellants. Mr. Mohanty next has drawn my attention to a settlement report made by Sri N. R. Hota. I. A. S., Settlement Officer, Cuttack Major Settlement, as the Final Report on Settlement of Kujang Forest Block 1959-66 in which the facts relating to the same Miscellaneous Case No. 399 of 1949-50 has been referred to. The report being a settlement report, is undoubtedly a public document and is admissible in evidence a;; such. It is to be seen how far the report helps the case of the Appellants. It appears therefrom that the original order of the Collector is not available and a portion of an unattested copy of the order of the Collector in the miscellaneous case has been extracted there which shows that 011 the basis of the recommendation of the Forest Officer, the Collector had granted permission to the Ex-intermediary to lease out different areas for the purpose of reclamation. Some areas viz, Kharinasi. Batighar, Barakolikhala and Tubi are mentioned there. It is not known as to whether the lands leased out to the lessees in the present case. were within the areas which were marked for being leased out in the miscellaneous case. Mr. Mohanty has also drawn my attention to another letter from the Government of Orissa, Revenue Department of Board of Revenue published in the book captioned Law Relating to the Government Land (Orissa) published by Mr. Raghunath Das, Advocate, being letter No. 58378-CE (GI) 6/66-Rev. Dept.) D/S Sept. 1966, in which there was a reference that the Ex-Proprietor of Kujang had been authorised by the Collector, Cuttack to lease out 19,470 acres of lands. Of course the settlement report as well as the letter of the State Government do not necessarily lead to a conclusion that the disputed lands were covered by the authorisation made by the Collector for the purpose of leasing out the same, but it cannot be denied that the disputed lands also might have been the lands for which permission had been granted in the very same Miscellaneous Case No. 399 of] 949.50 particularly when, as disclosed in the settlement report of Mr. Rota as also in the Govt. letters, a vast area was permitted to be leased out. Since objection was raised by the Respondents in the written statement and an issue

was struck on the question eventually for which the suit was dismissed, I feel that for the ends of justice, the matter should be further investigated ?With an opportunity to the Appellants to establish whether permission granted in Miscellaneous Case No. 399 of 1949-50 also related to the suit land or that the previous sanction in respect of the land was otherwise existing. It is necessary for the purpose to remand the suit. While thus setting aside the judgment and decree of the learned Subordinate Judge, I would remand the suit for fresh trial with an opportunity to the Appellants to amend the plaint if necessary and also to lead additional evidence to substantiate such plea.

6. In the result, the appeal is allowed, the judgment and decree of the learned Subordinate Judge are set aside and the suit is remanded for fresh trial. It is needless to observe that in the event it is found that the lease in favour of the original lessees was not void under the provisions of Act 1 of 1948, the other issues as arose in the suit has to be gone into and decided. The parties are directed to appear before the learned Subordinate Judge, Jagatsinghpur on 4-5-1987 to receive? further directions. There shall be no order as to costs.