

**(2019) 03 OHC CK 0011**  
**In the Orissa High Court**  
**Case No : S.A.No.43 Of 1988**

Chitrasen Majhi And Others

APPELLANT

Vs

State Of Orissa And Others

RESPONDENT

**Date of Decision :** 01-03-2019

**Acts Referred:**

Code Of Civil Procedure, 1908 — Section 80, Order 41 Rule 31  
Orissa Survey and Settlement Act, 1958 — Section 42  
Limitation Act, 1963 — Section 64  
Limitation Act, 1963 — Article 58

**Citation :** (2019) 03 OHC CK 0011

**Hon'ble Judges :** Dr. A. K. Rath, J

**Bench :** Single Bench

**Advocate :** Prabhab Behera, Debasis Pattnaik, Swayambhu Mishra

## **Judgement**

DR.A.K.RATH, J

1. Plaintiffs are the appellants against a reversing judgment in a suit for declaration of right, title, interest and permanent injunction.

2. The case of the plaintiffs was that sabik khata no.367, plot no.714, admeasuring an area of Ac.0.22 dec. had been recorded in the name of Bidya

Majhi, their ancestor, in sabik R.O.R.. After death of Bidya, his sons, Bhramar and Biswanath became the owner in possession of the land. Bhramar

died leaving behind plaintiffs 1 to 3 and Biswanath died leaving behind defendants 4 to 7 as legal heirs. The plaintiffs are in possession of the suit land.

In the hal settlement of the year 1976, Ac.0.12 dec. of land out of Ac.0.22 dec. had been recorded in the name of the plaintiffs. But then Ac.0.10 dec.

of land had been wrongly recorded in the name of the State Government under Anabadi Khata. Khata no.625 and plot no.867 (suit plot) formed a part

of the river bed. Taking advantage of wrong recording, defendants 2 to 4

threatened to dispossess the plaintiffs. Defendants 2 to 4 have no semblance of right, title and interest over the same. With this factual scenario, they instituted the suit seeking the reliefs mentioned supra.

3. Defendant no.1 filed written statement pleading, inter alia, that in hal settlement, the suit land had been bifurcated and recorded in the name of the State of Orissa as river bed. Since defendants 2 to 4 had encroached upon the suit land, encroachment case was initiated against them.

4. Defendant no.2 also filed written statement denying the assertions made in the plaint. Case of the defendants was that the suit land had been formed by deposit of alluvium by the river. The same is a part of the river bed. The plaintiffs have no right, title and interest over the suit land. The plaintiffs are not in possession of the suit land. Defendants 3 and 4 were set ex parte.

5. On the inter se pleadings of the parties, the trial court framed seven issues. The trial court decreed the suit holding that the suit was filed within the prescribed period of limitation. The suit land was originally recorded in the name of the ancestors of the plaintiffs. The same had been formed by deposit of alluvium by the river. The suit land adjoins the land of the plaintiffs. The plaintiffs are entitled to the land in view of the provisions of the

Bengal Alluvion and Diluvion Regulation, 1825. The plaintiffs are in possession of the suit land. Felt aggrieved, defendant nos.1 & 2 filed separate

appeals before the District Judge, Puri, which were subsequently transferred to the court of the Additional Subordinate Judge, Puri and renumbered as

Title Appeal No.59/100 of 1985/83 & Title Appeal No.65/105 of 1985/1983. Both the appeals were heard together. The appellate court came to hold

that the suit was not filed within three years from the date of publication of R.O.R.. In view of the provisions contained under Section 42 of the Orissa

Survey and Settlement Act and Article 58 of the Limitation Act, the suit is barred by time. Held so, it dismissed the appeal.

6. This appeal was admitted on the substantial questions of law enumerated in ground nos.2(b), (c) & (d) of the appeal memo. The same are :

â??(b) Whether the suit comes under Art.64 of the Limitation Act ?

(c) Whether the suit comes under Sec.42 of the Orissa Survey & Settlement Act, read with Art.58 of the Limitation Act ?

(d) Whether the provision of Bengal Alluvians and Dilluvians Regulation is

applicable to the present case ?â??

7. Heard Mr.Prabhab Behera and Mr.Debasis Pattnaik on behalf of Mr.D.K.Mishra, learned Advocates for the appellants and Mr.Swayambhu

Mishra, learned A.S.C. for respondent no.1. None appeared for respondent nos. 2 to 4.

8. Learned Advocate for the appellants submitted that the plaintiffs in para-9 of the plaint has specifically averred that on 1.4.1980 defendants 2 to 4

threatened to interfere with the possession of the plaintiffs. The defendants have not denied the assertions made in the plaint. The cause of action

arose on 1.4.1980. The suit was instituted on 3.12.1980. Thus, the suit was filed within the prescribed period of limitation. It was submitted that the

trial court came to a definite finding that the suit land has been formed by deposit of alluvium and the plaintiffs are entitled to the same. But then, the

appellate court being the final court fact has not discussed the said issue. The judgment of the appellate court is vitiated. To buttress the submission,

reliance was placed on the decisions of the Apex Court in the case of Daya Singh and another v. Gurudev Singh, AIR 2010 SC 3240 and this Court in

the case of Gokula Chandra Das and others v. Pramod Kumar Pradhan and others, 2014 (II) CLR 636.

9. Per contra, learned A.S.C. submitted that the appellate court has rightly held that the suit is barred by limitation. Reliance placed on Article 64 of

the Limitation Act by the trial court is totally misplaced. Article 64 of the Limitation Act can be pressed into service provided that the plaintiffs are in

possession of the suit land initially and have been dispossessed by the defendants. The suit is governed under Article 58 of the Limitation Act. There is

no evidence that the suit land has been formed by accretion of the land by the river and the same is adjacent to the land of the plaintiffs. He placed

reliance on a decision of the Apex Court in the case of Gurbinder Singh and another v. Lal Singh and another, AIR 1965 SC 1553.

10. It is pleaded that the plaintiffs are the owner in possession of the suit land. The defendants have no semblance of right, title and interest over the

same. Taking advantage of wrong entry into the R.O.R., defendants 2 to 4 threatened to interfere with the possession of the plaintiffs on 1.4.1980.

Thereafter, they issued notice to defendant no.1 on 18.9.1980 under Section 80 CPC.

11. Article 58 of the Limitation Act provides to obtain any other declaration. The period of limitation is three years, when the right to sue first accrues.

12. In *Khatri Hotels Pvt. Ltd. & Anr. V. Union of India & Anr.* (2011) 9 SCC 126, the Apex Court held:

“30. While enacting Article 58 of the 1963 Act, the legislature has designedly made a departure from the language of Article 120 of the 1908 Act. The word

“first” has been used between the words “sue” and “accrued”. This would mean that if a suit is based on multiple causes of action, the period of

limitation will begin to run from the date when the right to sue first accrues. To put it differently, successive violation of the right will not give rise to fresh cause and

the suit will be liable to be dismissed if it is beyond the period of limitation counted from the day when the right to sue first accrued.”

13. The Apex Court in the case of *Board of Trustees of Port of Kandla vs. Hargovind Jasraj and another*, 2013 (3) SSC 182 held thus:-

“22. The expression right to sue has not been defined. But the same has on numerous occasions fallen for interpretation before the Courts. In *State of Punjab*

& *Ors. V. Gurdev Singh* (1991) 4 SCC 1, the expression was explained as under :

“6. The words “right to sue” ordinarily mean the right to seek relief by means of legal proceedings. Generally, the right to sue accrues only when the

cause of action arises, that is, the right to prosecute to obtain relief by legal means. The suit must be instituted when the right asserted in the suit is infringed or when

there is a clear and unequivocal threat to infringe that right by the defendant against whom the suit is instituted.”

14. The trial court committed a patent error in holding that the suit is governed under Section 64 of the Limitation Act and the period of limitation is

twelve years. The appellate court is equally erred in law in holding that the suit is for correction of R.O.R. The period of limitation is three years for

institute of the suit under Section 42 of the Orissa Survey and Settlement Act. The R.O.R. was published in the year 1976 and, as such the suit is

barred by limitation. In the instant case the plaintiffs have instituted the suit for declaration of title, not correction of R.O.R. the suit is governed under

Article 58 of the Limitation Act.

15. In Gurbinder Singh, the Apex Court held that in order that Article 142 is attracted the plaintiff must initially have been in possession of the property

and should have been dispossessed by the defendant or someone through whom the defendants claim or alternatively the plaintiff should have

discontinued possession. Article 142 of the old Limitation Act corresponds to Article 64 of the Limitation Act. As held above, the instant suit is

governed under Article 58 of the Limitation Act.

16. The Apex Court in the case of B.V.Nagesh and another vs. H.V. Sreenivasa Murthy, 2010 (13) SCC 530 held:

“3. How regular first appeal is to be disposed of by the appellate court/High Court has been considered by this Court in various decisions. Order 41 CPC deals with

appeals from original decrees. Among the various rules, Rule 31 mandates that the judgment of the appellate Court shall state:

a) the points for determination;

b) the decision thereon;

c) the reasons for the decision; and

d) where the decree appealed from is reversed or varied, the relief to which the appellant is entitled.

4. The appellate Court has jurisdiction to reverse or affirm the findings of the trial court. The first appeal is a valuable right of the parties and unless restricted by law,

the whole case therein is open for rehearing both on questions of fact and law. The judgment of the appellate Court must, therefore, reflect its conscious application

of mind and record findings supported by reasons, on all the issues arising along with the contentions put-forth, and pressed by the parties for decision of the

appellate Court. Sitting as a court of appeal, it was the duty of the High Court to deal with all the issues and the evidence led by the parties before recording its

findings. The first appeal is a valuable right and the parties have a right to be heard both on questions of law and on facts and the judgment in the first appeal must

address itself to all the issues of law and fact and decide it by giving reasons in support of the findings. (Vide Santosh Hazari vs. Purushottam Tiwari, (2001) 3 SCC

179 = JT (2001) 2 SC 407 and Madhukar and others vs. Sangram and others,

(2001) 4 SCC 756)

5. In view of the above salutary principles, on going through the impugned judgment, we feel that the High Court has failed to discharge the obligation placed on it as

a first appellate Court. In our view, the judgment under appeal is cryptic and none of the relevant aspects have even been noticed. The appeal has been decided in an

unsatisfactory manner. Our careful perusal of the judgment in the regular first appeal shows that it falls short of considerations which are expected from the Court of

first appeal. Accordingly, without going into the merits of the claim of both parties, we set aside the impugned judgment and decree of the High Court and remand the

regular first appeal to the High Court for its fresh disposal in accordance with law.â??

17. The appellate court did not delve into the issue with regard to the right, title and interest of the plaintiffs over the suit land. In view of the foregoing

discussions, the judgment of the appellate court is set aside. The matter is remitted back to the District Judge for de novo hearing. The appellate court

shall endeavour to dispose of the appeal within a period of six months. Since the appeal is remitted back to the appellate court, this Court has not

discussed the judgments cited by the learned Advocate for the appellants.

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