
(2017) 12 OHC CK 0037

In the Orissa High Court

Case No : 24 of 2017

Durga Charan Roul and others

APPELLANT

Vs

Bhagirathi Roul and others

RESPONDENT

Date of Decision : 20-12-2017

Acts Referred:

[Limitation Act, 1963](#), [Section 5](#) -
Extension of prescribed period in certain cases
[Orissa Survey and Settlement Act, 1958](#), [Section 12B](#), [Section 15\(b\)](#)

Citation : (2017) 12 OHC CK 0037

Hon'ble Judges : Vineet Saran, B.R.Sarangi

Bench : DIVISION BENCH

Advocate : S. Mishra, B. Mohanty, A. Mohanta, E. Agarwal, L.K. Moharana,
S.K.Samantray, B.P. Pradhan

Judgement

1. The appellants, being opposite parties no.3 to 6 before the writ Court, have filed this intra-Court appeal impugning the order dated 15.12.2016 passed by the learned Single Judge in W.P.(C) No.21270 of 2015, whereby, while allowing the writ petition, the order dated 16.11.2015 passed by the Additional Commissioner of Settlement, Sambalpur in R.P. Case No.76 of 2014 has been set aside.

2. The factual matrix of the case in hand is that the present appellants, as the revision petitioners, filed an application under Section 15 (b) of the Orissa Survey and Settlement Act, 1958 and Rules framed thereunder before the Addl. Commissioner Settlement and Consolidation, Sambalpur registered as R.P. Case No.76 of 2014, wherein the present private respondents were impleaded as contesting opposite parties, for recording the land in question separately in their name by correction of Record of Right (ROR). The appellants pleaded that Sabik khata no.14/1 of village Mochigaon measuring Ac.1.94 decimals, which corresponds to Sabik plot no.5 measuring Ac.1.86 decimals and plot no.90/225 measuring Ac.0.08 decimals, originally recorded in the name of their grandfather, namely, Lambodar Roul. Plot no.90/225 measuring Ac.0.08 decimals was

acquired by the State Government vide L.A. Case no.01/1958-59. Therefore, the remaining area of Ac.1.86 decimals was exclusively recorded in the name of grandfather of the appellants, who was in absolute physical possession over the same, and after death of their grandfather, the present appellants have been in continuous possession over such land with its right and title. During the last settlement operation, the settlement authorities recorded the name of father of the appellants in respect of the suit land and also included the name of father of the private respondents. Therefore, the appellants prayed that hal khata no.72, plot no.6 corresponding to sabik plot no.5 should be exclusively recorded in the name of the appellants and the name of the private respondents be deleted and accordingly necessary correction be carried out in the ROR. On being noticed, the private respondents advanced their arguments contending that the case land was in joint possession of the ancestors of the parties and after them, the appellants and the private respondents, being the legal heirs, are possessing said land without any interference from any quarter. Considering the possession of the land, the settlement authority in the settlement operation has prepared the ROR jointly. The question of delay was also raised, as the revision petition was filed beyond the statutory period of limitation. The revisional authority called for parawise report from the Tahasildar and Addl. Sub4 Collector (Settlement), Keonjhar to ascertain the fact of possession of the parties over the case land. Accordingly, the Tahasildar reported the fact of possession in favour of the present appellants whereas the report of the Addl. Sub-Collector (Settlement), Keonjhar reveals the name of sabik recorded tenant who was the common ancestor of the present appellants. On the basis of the pleadings available on record, the revisional authority framed as many as five issues and, while considering the issue nos.2 and 5 regarding right, title and interest of the parties over the disputed land and the question of limitation, came to a definite finding that the application has been filed beyond the statutory period of limitation and the common ancestors of the present appellants having been made available only in sabik recorded tenant of the suit land, the grandfather of the private respondents are no way concerned to such property and wrongly the name of grandfather of the private respondents has been included with the name of grandfather of the appellants in respect of the case land during hal settlement and, as such, the same needs to be corrected by deleting the name of Siropani Roul from the suit khata. While considering the question of limitation, the revisional authority in paragraph-23 of the judgment has elaborately discussed the same and came to a conclusion that the Court should decide the case on the basis of materials available on record and technicalities should not stand as a bar while granting justice to a party who is otherwise entitled to be granted with such relief. Consequentially, vide order dated 16.11.2015, the revisional authority allowed R.P. Case No.76 of 2014 in favour of the appellants/revision petitioners and issued direction to the Tahasildar to delete hal plot no.6 from hal khata no.72 of village Mochigaon and prepare separate record in the name of the appellants. Being aggrieved by the said order dated 16.11.2015 passed in R.P. Case No.76 of 2014, the private respondents preferred W.P.(C) No.21270 of 2015

impleading the present appellants as opposite parties no.3 to 6 with a prayer to set aside the order dated 15.11.2015 passed in R.P. Case No.76 of 2014 by the revisional authority and to include their name in the hal ROR in respect of the disputed land. The learned Single Judge, after hearing both parties, allowed the writ petition on 15.12.2016 and set aside the order dated 16.11.2015 on the ground that the revisional authority has not considered the question of delay of more than three decades in its appropriate spirit, hence this application.

3. Mr. S.K. Samantray, learned counsel for the appellants vehemently contended that though Section 15(b) of the Orissa Survey and Settlement Act, 1958 specifically prescribes to file revision within a period of one year from the date of final publication under Section 12-B of the Act or thereafter, the word "or thereafter" has no restricted meaning rather the said application can be filed even after expiry of one year and even it is not necessary to show sufficient cause for filing of the revision by filing application under Section 5 of the Limitation Act. It is further contended that such provision contained in Orissa Survey and Settlement Act, 1958 is a procedural one and its object is to do substantial justice in order to check the litigants to come to the Court with a mala fide intention to harass the other side. It is urged that not a scrap of paper has been filed by the private respondents to establish their prima facie case and without delving into the merits of the case the learned Single Judge could not and should not have disposed of the matter on the ground of limitation. It is further urged that the reference made by the learned Single Judge to the cases in Laxminarayan Sahu v. State of Orissa, 1991 (I) OLR 82 (FB) and Labanyabati Devi v. Member, Board of Revenue, 1993 (II) OLR 365 relate to Section 59 (2) of the OLR Act, wherein suo motu power of revisional authority had been described, but the said decisions are no way related to the present facts and circumstance of the case. Therefore, he seeks to set aside the order dated 15.12.2016 passed by the learned Single Judge in W.P.(C) No.21270 of 2015.

4. We have heard Mr. S.K. Samantray, learned counsel for the appellants and Mr. B.P. Pradhan, learned Addl. Government Advocate for respondent nos.5 and 6. Since the matter has been heard at the stage of fresh admission, no notice has been issued to respondents no.1 to 4 (opposite parties before the revisional authority and petitioners before the writ Court).

5. It is profitable to refer the provisions contained under Section 15 (b) of the Orissa Survey Settlement Act, 1958. Section 15 (b) reads thus:- "15. Revision by Board of Revenue - The Board of Revenue may in any case direct -

xxx xxx xxx

(b) on application, made within one year from the date of final publication under Section 12-B, the revision of record of rights or any portion thereof whether within the said period of one year or thereafter but not so as to affect order passed by a Civil Court under section 42:

Provided that no such direction shall be made until reasonable opportunity has

been given to the parties concerned to appear and be heard in the matter."

From the aforementioned provision, it is made clear that on an application, made within one year from the date of final publication under Section 12-B of the Act, revision of ROR or any portion thereof has to be made within the said period of one year or thereafter. The said provision provides that application is to be made within a period of one year after final publication under Section 12-B seeking for revision for record of rights or any portion thereof. However, the meaning of the word "or thereafter", as mentioned in the said section, can be construed to mean that even after one year from the date of final publication under Section 15 (b), the revision can be filed. Thereby, no restriction can be put to file a revision application after expiry of one year period as contemplated under Section 15 (b) of the Survey and Settlement Act, 1958 for correction of records. So far as maintainability of revisional application is concerned, there is no iota of doubt that such application is maintainable even after the period of one year of final publication under Section 12-B of the Survey and Settlement Act, 1958.

6. Admittedly, the proceeding was initiated before the revisional authority after long lapse of 37 years. Even though the statute does not prescribe any period of limitation, but for entertaining an application at such a belated stage specific reason has to be assigned by the revisional authority. The learned Single Judge therefore by order dated 15.12.2016; on perusal of the pleadings made by the appellants/revision petitioners before the revisional authority in paragraph-5, as well as issue no.5 framed by the revisional authority with regard to question of delay of more than three decades; came to a finding that since the revision was filed after three decades, even though the statute nowhere provides any period of limitation; in view of the decisions in *Laxman Konda v. State of Orissa*, 72 (1991) CLT 49 and *Union of India v. Kishorilal Bablani*, AIR 1999 SC 517, wherein law has been settled that no prescription of limitation does not mean that the dispute can be raised beyond unreasonable period, and further taking into consideration the judgments of this Court in *Laxminarayan Sahu v. State of Orissa*, 1991 (I) OLR 82 (FB); *Labanyabati Devi v. Member, Board of Revenue*, 1993 (II) OLR 365; *Santosh Kumar Shivgonda Patil v. Balasaheb Tukaram Shevale*, AIR 2009 SCW 6305 ; and *W.P.(C) No.3651 of 2002 (Chaitanya Das v. Bibhuti Charan Das)* disposed of on 14.12.2016; wherein it has been held that entertaining the claim after twelve years cannot be held to be within reasonable period; allowed the writ petition on the ground that the revisional authority has not considered the question of delay of more than three decades in its appropriate spirit.

7. Having regard to the facts and circumstances of the case and keeping in view the law settled in the present context by the apex Court as well as this Court, we concur with the finding of the learned Single Judge that the revisional authority, while passing the order dated 16.11.2015 in R.P. Case No.76 of 2014, has not dealt with the issue relating to limitation in its proper perspective. Even though no specific period of limitation has been prescribed under the Act, after long

lapse of three decades, a settled position cannot and should not have been allowed to be unsettled. The appellants, having not approached the revisional authority within reasonable time, are to suffer for their own negligence and laches.

8. In view of the above, this Court does not find any illegality or irregularity in the impugned order dated 15.12.2016 passed by the learned Single Judge so as to warrant interference. Accordingly, we do not find any merits in the writ appeal and the same is hereby dismissed.