

**(1959) 05 OHC CK 0002**

**In the Orissa High Court**

**Case No : Second Appeal No. 84 of 1957**

Gopal Chandra Deutta

APPELLANT

Vs

State of Orissa

RESPONDENT

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**Date of Decision : 04-05-1959**

**Acts Referred:**

Central Provinces Land Revenue Act, 1881 — Section 114, 152, 92  
Civil Procedure Code, 1908 (CPC) — Order 6 Rule 6, Order 8 Rule 2  
Forest Contract Rules — Rule 12

**Citation : (1959) 25 CLT 466**

**Hon'ble Judges : Mohapatra, J**

**Bench : Single Bench**

**Advocate : L.K. Dasgupta, for the Appellant; None, for the Respondent**

**Final Decision : Dismissed**

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## **Judgement**

Barman, J.—This is a Plaintiff's second appeal against the reversing judgment of the lower appellate court arising out of suit brought by the Plaintiff for a declaration that he is not liable to pay the amount for which the Defendant, that is, the State Government of Orissa, had issued a certificate for realisation of the dues as land revenue. The case is coming from the Sambalpur area and the subject matter is in respect of some forest area of Barmunda. The case is that Coupes Nos. 35 and 36 were put up for auction sale by the forest authorities and were knocked down in favour of the present Plaintiff No. 28-8-51, the Plaintiff being the highest bidder for Rs. 800/-. Accordingly a contract, was signed between the parties in accordance with law and it was duly sanctioned by the higher authority of the Forest Department on 11-9-1951. The contract was in respect of 74 acres of forest area for removal of timbers. The Plaintiff's assertion is that he had not taken delivery of possession and on 20-11-1951 he found that many of the trees of the area had been removed. He further asserts that in fact 23 acres of the forest area, leased out to him, were made completely clean by removal of the timbers standing thereon. This position is not denied by the Defendant. As the Plaintiff did not take delivery of possession the Defendant

cancelled the lease and brought certificate proceedings (Case No. 4/6-86 of 1952-53) for realisation of Rs. 822/15/-. It is after this that the present suit has been brought by the Plaintiff pleading non-liability on the ground that it was mandatory on the part of the Defendant under the provisions of Rule 12 of the Forest Contract rules to identify the area before the Plaintiff could take delivery of possession. There was therefore a breach of the contract on the part of Defendant and the Plaintiff is therefore not liable. The defence was assertion of the liability of the Plaintiff on account of the breach of the contract by the Plaintiff himself in not having taken delivery of possession.

2. The lower appellate Court has not only dismissed the Plaintiffs suit on merits but also on a preliminary ground of law which goes to the root of the Plaintiff's case to maintain the suits. In order to appreciate the preliminary point on the basis of which the suit has been dismissed, we shall have to refer to the provisions of two sections of the Central Provinces Land Revenue Act (Act 18 of 1881). I may note that there is no dispute over the position by Mr. Dasgupta, appearing on behalf of the Plaintiff-appellate, that the amount for which certificate proceedings were started is realisable as land revenue. The two relevant sections are 114 and 152 of the Act. Section 152(a) and (b)(10) which are relevant for the purpose run as follows:

152. Except as otherwise herein before provided.

(a) No Civil Court shall entertain any suit instituted, or application made, to obtain a decision or order on any matter which the Provincial Government or a Revenue or Settlement Officer is, by this Act, empowered to determine or dispose of; and in particular.

(b) X X X X.

10 claims connected with, or arising out of the collection of revenue, or any process enforced on account of an arrear of revenue or on account of any sum which is under this or any other Act, realizable as revenue.

This is a general section which makes suits before the Civil Court not maintainable. Indeed the saving clause is "Except as otherwise hereinbefore provided". It is now relevant to refer to Section 114 of the Act which runs as follows:

Notwithstanding anything contained in Section 92, when proceedings are taken under this Act for the recovery of an arrear, the person against whom such proceedings are taken may, if he denies that the arrear or any part thereof is due, pay the same under protest at the time of payment and duly signed by him or by his agent, and institute a suit in the Civil Court for the recovery of the amount which he denies to be due.

3. It is not disputed that if the amount is not paid as provided for under the section, the suit is not maintainable. Mr. Dasgupta's point is that the case must be concluded on the pleadings of the parties and his further assertion is that it was

for the Defendant to have specifically pleaded the condition precedent as provided for u/s 114 of the Act and in as much as the Defendant had not done so, it must betaken that the condition precedent has been complied with. I am not inclined to accept the contention of Mr. Dasgupta that it was the incumbent duty of the Defendant to raise the plea in the written statement and not for the "Plaintiff to take up such pleading in the plaint itself. A plain juxtaposition of the provisions of the two sections makes it clear to my mind that the provisions of Section 114 of the Act are a statutory bar to maintain a suit where the Plaintiff prays for a declaration about his non-liability. The condition precedent is that he has got to make the payment under protest and then only he will be entitled to institute a suit. In the face of this statutory bar when the Plaintiff comes for ward with a suit to invoke special jurisdiction of the Civil Court which in very general language is forbidden by the provisions of Section 152 of the Act, he must take up such a pleading in the plaint that he has fulfilled the condition in order to maintain the suit as provided for u/s 114 which is one of the exceptions against non-maintainability of suits u/s 152 of the Act.

4. Mr. Dasgupta has drawn my attention the two relevant provisions of CPC regarding pleadings. I will first refer to Order 8, Rule 2 runs as follows:

The Defendant must raise by his pleadings all matters which show the suit not to be maintainable, or that the transaction is either void or voidable in point of law and all such grounds of defence as, if not raised, would be likely to take the opposite party by surprise or would raise issues of fact not arising out of the plaint, as, for instance, fraud, limitation, release, payment, performance, or facts showing illegality

Mr. Dasgupta's emphasis is upon this rules which makes it incumbent upon the Defendant to take a special plea that the suit is not maintainable on account of the condition precedent not having been fulfilled. This rule should be read along with Order 6, Rule 6 which makes provisions f or pleadings generally. It is provided there:

Any condition precedent, the performance or occurrence of which is intended to be contested, shall be distinctly specified in his pleading by the Plaintiff or Defendant, as the case may be; and subject thereto, an averment of the performance or occurrence of all conditions precedent necessary for the case of the Plaintiff or Defendant shall b implied in his pleading.

5. The provisions make it clear that it is not always for the Defendant to take up special plea of a condition precedent not having been fulfilled by the Plaintiff in order to oust the jurisdiction of the Civil Court. The Legislature contemplates also of cases where it makes it incumbent upon the Plaintiff to take up special plea to maintain his suit. As I have already indicated, in cases of this nature where there is a general section as Section 152 of the Act ousting the jurisdiction of the Civil Court, it is for the Plaintiff to take a special plea to invoke the jurisdiction of the Civil Court u/s 114 of the Act to make the suit maintainable. I am not inclined to

discuss the matter at a fuller length on account of a very important feature that arises in this case. The suit has been thrown off more than a year and half ago by lower appellate Court. There is nothing to indicate that in fact Section 114 had been complied with. I therefore asked Mr. Dasgupta to ascertain whether in fact the provisions of 114 had been complied with at any time. Mr. Dasgupta very fairly concedes that there has been no compliance; but nevertheless he places the point that the case must be decided on the pleadings and it does not matter whether in fact the provisions of Section 114 are complied with or not. I am not in favour of this contention inasmuch as to accept the contention, in my view, is to encourage abuse of procedural law and to defect administration of substantive justice.

6. Under these circumstances, therefore, I am of the view that the lower appellate Court was perfectly justified in throwing off the Plaintiff's suit as not maintainable. In this view the other points therefore do not require consideration. The appeal is accordingly dismissed; but the parties are to bear their own costs throughout. Mr. Dasgupta prays for leave to appeal which is refused. Appeal dismissed.