

**(2001) 03 OHC CK 0037**

**In the Orissa High Court**

**Case No : Second Appeal No. 270 of 1984**

Judhistir Naik and others

APPELLANT

Vs

Golekha Chandra Lenka and others

RESPONDENT

**Date of Decision : 26-03-2001**

**Acts Referred:**

Criminal Procedure Code, 1973 (CrPC) — Section 145  
Limitation (Amendment) Act, 1963 — Article 64, 65, 27  
Limitation Act, 1908 — Article 47, 28

**Citation : (2001) 91 CLT 725**

**Hon'ble Judges : P.K. Misra, J**

**Bench : Single Bench**

**Advocate :** M/s B.H. Mohanty, R.N. Panda, J.K. Bastia and R.K. Nayak, for the Appellant; M/s D. Deo, U.S. Patnaik, R. Das, A.K. Patra-2, S.R. Patnaik, B.N. Lenka, M.R. Patra, D.R. Mohapatra, D. Patra, B. Brahmachari and B. Sahoo, for the Respondent

**Final Decision : Dismissed**

## Judgement

P.K. Misra, J.—Plaintiffs are the appellants against a confirming decision. There is no dispute that the disputed property originally belonged to one Rodani Bewa. The plaintiffs claim that plaintiff No. 2, father of plaintiff No. 1 and the father of plaintiff Nos. 3 to 7 had purchased the disputed property from Rodani Bewa by a registered sale deed dated 9-4-1949. Subsequently, the father of plaintiff No. 1 transferred his one-third interest in favour of plaintiff No. 1 on 17-8-1962 and plaintiff No. 1 thus possessed the disputed property along with plaintiff No. 2 and the father of plaintiffs 3 to 7, In the year 1974, the defendants threatened to dispossess them on the ground that they had purchased the property from Rodani Bewa on 8-4-1969. It is claimed that the subsequent sale deed is nor binding on the plaintiffs. It is further claimed that the plaintiffs had given their sale deed to the Amin during the settlement proceeding and the sale deed was lost.

2. Defendants 1, 2, 3, 5, 6, 12, 15, 17 and 18 filed a common written statement

denying the plaint allegations. It was stated by them that Rodani Bewa was living with her sister's son, Madan Naik, in the disputed property and there was no necessity to sell the disputed property to the plaintiffs in the year 1949. It was further pleaded that taking advantage of the temporary quarrel between Rodani Bewa and her nephew Madan, the father of plaintiff No. 1 obtained a fraudulent sale deed and subsequently, on the intervention of Bhadrals, the original sale deed was returned by the father of plaintiff No. 1 to Rodani with an endorsement and she continued to remain in possession. In 1949, there was a proceeding u/s 145, Code of Criminal Procedure, wherein Madan and some other villagers were members of first party and the purchasers under the sale deed dated 9-4-1949 and others were arrayed as second party. The possession of the first party members was confirmed by order dated 2-3-1950. After the death of Madan, Rodani, who suffered from cancer, being helpless transferred the disputed property in favour of the defendants. It was pleaded that the plaintiffs and their predecessors-in-interest having not filed the suit for recovery of possession within three years from the date of the order passed u/s 145, Code of Criminal Procedure, their title, if any, stood extinguished by the law of limitation.

3. The trial court held that the sale deed (Ext.-1) executed by Rodani in favour of the plaintiffs and their predecessors-in-interest was never acted upon and the plaintiffs and their predecessors-in-interest did not take possession of the disputed property. It was also found that no suit for declaration of right, title and recovery of possession having been filed within three years, the plaintiffs and their predecessors-in-interest had lost right, title and interest and the present suit is barred by the law of limitation. The aforesaid finding having been confirmed in appeal, the present Second Appeal has been filed.

4. It is to be noted that the proceeding u/s 145, Code of Criminal Procedure, was terminated against the plaintiffs and their predecessors-in-interest (the alleged purchasers from Rodani) in the year 1950. At that stage the Limitation Act, 1908 was in operation. Article 47 of the Limitation Act, 1908 provided that a suit for declaration of title and recovery of possession has to be filed within a period of three years from the date of the decision declaring the possession of a party, section 28 of the old Limitation Act which corresponds to section 27 of the New Limitation Act provides as follows :--

" 27. Extinguishment of right to property.--At the determination of the period hereby limited to any person for instituting a suit for possession of any property, his right to such property shall be extinguished."

This provision contains an exception to the general principle that the statute of limitation bars the remedy, but does not extinguish the right. In respect of immovable property, if such property is not recovered within the period of limitation, not only the remedy is barred, but also the person concerned loses his right to the property. It is, of course, true that under the new Limitation Act, there is no such provision corresponding to old Article 47 and the period of limitation for recovery of immovable property is twelve years from the relevant

date either under Article 64 or Article 65. Since the earlier proceeding u/s 145, Code of Criminal Procedure, had been decided when the Limitation Act, 1908 was applicable and the suit for recovery of possession was not filed within three years as provided under Article 47 of the old Limitation Act, there cannot be any doubt that in view of the provision contained in section 28 of the old Limitation Act, the plaintiffs and their predecessors-in-interest lost their right over the property and the new Limitation Act did not have the effect of reviving the title which was already lost.

5. It has been contended that the defendants having purchased the property from Rodani Bewa against whom the 145 Cr. P. C. proceeding had terminated, in view of the fact that the plaintiffs have been paying the rent it must be taken that the order u/s 145, Code of Criminal Procedure, was non-est and there was no necessity for filing a suit. It is not the case of the plaintiffs that they and their predecessors-in-interest got back possession from the successful party u/s 145, Code of Criminal Procedure, by virtue of any subsequent amicable settlement. Merely because the defendants got a sale deed from Rodani Bewa, it cannot be construed that the title of the plaintiffs got revived.

6. Apart from the aforesaid discussions which negate the contentions raised by the plaintiffs, even the courts below have refused to accept the transaction in favour of the plaintiffs and their predecessors-in-interest as genuine. It has been found by both the courts below that the sale deed of the year 1949 had also not been acted upon. In other words, both the courts below have found that the plaintiffs had not obtained any title by virtue of the sale deed stated to have been executed in favour of the plaintiffs by Rodani Bewa. This finding is essentially a finding of fact and there is no substantial infirmity in the decisions of the courts below on this aspect.

7. Learned counsel for the appellants has placed reliance on the decision reported in 1994 II O L R. 228 (Kasi Sahoo and others v. Haribandhu Jena and others), but the ratio of the said decision is not at all applicable. Though it is not so stated, it is apparent that the proceeding u/s 145, Code of Criminal Procedure, in the said decision had terminated after the commencement of the Limitation Act, 1963. As already indicated above, in the new Limitation Act there is no provision corresponding to Article 47 of the old Limitation Act. In other words, the period of limitation for filing a suit for recovery of possession is twelve years from the date of termination of the proceeding and the question of filing a suit within three years after the termination of the proceeding u/s 145, Code of Criminal Procedure, does not arise under the new Limitation Act, and as a matter of fact, no such question had also been raised in the said case. The decision is clearly distinguishable.

8. For the aforesaid reasons, I do not find any merit in the appeal which is accordingly dismissed. However, there will be no order as to costs.

9. Appeal dismissed.