

(2012) 01 OHC CK 0013
In the Orissa High Court
Case No : First Appeal No. 273 of 1989

Kartar Singh (Since dead) after him Gurudeep Kaur and Others APPELLANT

Vs

Steel Authority of India Ltd, Rourkela Steel Plant and Others RESPONDENT

Date of Decision : 25-01-2012

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 27
Orissa Development Authorities Act, 1982 — Section 3

Citation : AIR 2012 Ori 145 : (2012) 113 CLT 1079

Hon'ble Judges : B.K. Nayak, J

Bench : Single Bench

Advocate : R.K. Mohanty, G.B. Jena, N. Behuria, D.K. Mohanty and Ors, for the Appellant; N.K. Sahoo and Ors., for the Respondent

Final Decision : Dismissed

Judgement

B.K. Nayak, J.—Judgment and decree dated respectively 31.08.1989 and 06.09.1986 passed by the Learned Sub-Ordinate judge, Rourkela in Title Suit No. 6 of 1984 dismissing the Plaintiffs' suit have been assailed in this First Appeal. The Plaintiff-Appellant filed the aforesaid Titled Suit for declaration of his title over the land and for permanent injunction restraining Defendant Nos. 1 and 2 from proceeding with cases instituted under the Public Premises (Eviction of Unauthorized Occupants) Act for eviction of the Plaintiff and for restraining Defendant No. 3 from demolishing Plaintiffs garage standing on the suit land.

2. The Plaintiffs case is that the suit land measuring Ac. 0.77 decimals appertaining to Hal Plot Nos. 606(P), 607, 6089(P), 633(P) and 640(P) under Hal Khata No. 12 situated in Rourkela Town (corresponding to Sabik Plot Nos. 541 and 534 under Sabik Khata Nos. 98 and 93 of Mohulpali Mouza) belonged to late Dharam Das Toppo. After the death of Dharam Das Toppo his wife, Binko Toppo became the owner of the suit land and for legal necessity she sold Ac. 0.28 decimals and Ac. 0.29 decimals respectively on 29.01.1954 and 17.02.1954 for

consideration of Rs. 85 and Rs. 90 appertaining to plot No. 540 and granted receipts in token of receipt of such consideration and delivered possession of the same to the Plaintiff. She also put the Plaintiff in possession of additional Ac. 0.20 decimals of land as there was no aid for demarcation. Accordingly, the Plaintiff got possession of Ac. 0.77 decimals of land in to in 1954 and since then is in enjoyment of the same by putting up his motor garage, residential house, kitchen garden, etc. He also got electricity connection to the said premises. In the year 1962 the Rourkela NAC. (Defendant No. 3) issued a notice to him for demolition of the construction over the suit land treating the same as unauthorized and after the Plaintiff filed his show cause no further action was taken by Defendant No. 3 Defendant No. 1-Steel Authority of India Ltd and its Assistant Manager (Defendant No. 2) filed a petition before the Estate Officer, Rourkela for the first time on 21.05.1981 under the Public Premises (Eviction of Unauthorized Occupants) Act for eviction of the Plaintiff from Ac. 0.27 decimals of the suit land, which was registered as P.P. Case No. 5049/81. Again Defendant Nos. 1 and 2 instituted another P.P. Case No. 5032/84 for eviction of the Plaintiff in respect of the land measuring 1010 square feet. The Plaintiffs claim is that he has acquired title over Ac. 0.57 decimals of the suit land by way of purchase and Ac. 0.20 decimals of the suit land by way of adverse possession. Alternatively, it is pleaded by the Plaintiff that he has perfected his right, title and interest over the entire suit land measuring Ac. 0.77 decimals, being in open, continuous and uninterrupted possession for a period of more than 12 years to the knowledge of everybody. It is stated that the suit land being not a public premises, the provisions of the Public Premises (Eviction of Unauthorized Occupants) Act (in short the "P.P. Act") are not applicable and, therefore, the proceedings under the Act against the Plaintiff instituted by Defendant Nos. 1 and 2 are not maintainable. Defendant No. 4 was impleaded as a Party as he was claiming title to the excess and of 20 decimals.

3. Defendant Nos. 1 and 2 filed a joint written statement pleading that Dharama Das, the husband of Binko Toppo and his brothers, namely, Johan Christian, Bijaya Christian and Dayalu Christian were the joint owners of the suit land appertaining to Sabik Plot Nos. 534 and 540 under Khata No. 98 and in the R.O.R. suit land was recorded in their names jointly and as such Binko Toppo was not sole owner of Sabik Plot No. 540 and had no right to alienate any portion of the same. Besides, he being a tribal (Adivasi) lady has no right to inherit or succeed to the property of her husband and she being a tribal could not alienate the land to a non-tribal person (Plaintiff). It was also denied that Binko Toppo sold the suit land to the Plaintiff and delivered possession to him. It is further pleaded by Defendant Nos. 1 and 2 that by virtue of notification issued on 22.02.1954 the suit land along with other lands situated in village- Mahulpali were acquired by the State for the purpose of installing Steel Plant at Rourkela by Hindustan Steel Ltd. and the State delivered possession of the same to Defendant No. 1 on 17.07.1955. For acquisition of the land, the recorded owners have been paid compensation, that is to say, the recorded owners of-the

Christian family have received compensation for acquisition of Sabik Plot Nos. 534 and 540 and the family of Defendant No. 4 received compensation for Plot No. 541. Because of the acquisition of the land, Binko Toppo could neither alienate nor deliver possession of the suit land to the Plaintiff. Alternatively, it is pleaded that assuming that the Plaintiff acquired title by sale, it stood extinguished by virtue of notification of acquisition issued by the State. The Plaintiffs claim of possession over the suit land since 1954 has also been denied. It is stated that after finding subsequent encroachments by the Plaintiff, the NAC. (Defendant No. 3) rightly issued notice to the Plaintiff for demolition of unauthorized construction and it was not true that the NAC closed the case without further action. On the other hand, orders have been passed on 23.05.1979 and 03.05.1985 for demolition. Defendant Nos. 1 and 2 have started eviction proceedings under the P.P. Act in the years 1981 and 1984 after finding encroachments during those years for different portions of the land. The Plaintiff, however, in the meanwhile managed to obtain record-of-rights in respect of Ac. 0.17 decimals of land, unconnected with the suit land, which was subsequently turned down by the Commissioner of Land Settlement, Orissa in Revision Petition No. 698/80. Against such revisional order, the Plaintiff preferred O.J.C. No. 1983 of 1986 and challenged the initiation of P.P. Cases by the Defendants, 1 and 2 by filing OJC Nos. 1370 of 1985 and 1160 of 1985, which are subjudice. It is also denied that the Plaintiff has acquired right, title and interest by way of adverse possession. It is also pleaded that the suit is bad for non-joinder of the State Government as a party and that the suit is grossly undervalued and the Civil Court has no jurisdiction to entertain the suit in view of the provisions of the P.P. Act, 1971.

4. Defendant Nos. 3 and 4 were set ex-parte.

5. On the pleadings of the parties, the Trial Court framed ten issues and on consideration of the evidence dismissed the suit with the findings that the so called sale of Ac. 0.57 decimals of suit land in two transactions are invalid and they do not confer any title on the Plaintiff and that the State is the owner because of acquisition of the land and the State having not been impleaded as a party, the suit suffers from the defect of non-joinder of necessary party, and that the Plaintiff has not acquired title to the suit land by adverse possession and that his possession is not for 30 years and not uninterrupted.

6. During the course of hearing of this appeal, the Respondents have filed a petition under Order 41 Rule 27 to admit copy of the lease deed dated 01.07.1993 executed by the State of Orissa in favour of Respondent No. 1 Steel Authority of India Limited leasing out the acquired lands for 99 years with effect from 01.06.1976. The lands were acquired in Rourkela of Sundargarh District for the purpose of establishment of Steel Plant by Hindustan Steel Limited, the predecessor of Respondent No. 1. The Said petition shall be dealt with later at appropriate stage.

7. In assailing the impugned Judgment, the Learned Counsel for the Appellant

contended that Exts. 6 and 7, the two money receipts issued by Binko Toppo, the vendor of the Plaintiff-Appellant, in token of receipt of consideration for sale of the suit land have not been considered by the Trial Court in their correct perspective and that the Plaintiff's evidence with regard to possession over the suit land since 1954 has not been properly assessed by the Trial Court. It is submitted that assuming for the sake of argument that the Plaintiff did not derive title to the suit land by virtue of such purchase, his title to the suit land should have been declared on the basis of adverse possession. His further submission is that assuming that the land was acquired for Steel Plant and the State continued to be owner as found by the Trial Court, inasmuch as the land had not been transferred by the State in favour of Respondent No. 1. at least the possessory title of the Plaintiff as against Respondent No. 1. should have been declared.

8. Learned Counsel for the contesting Respondent, on the other hand, submits that the Trial Court has rightly found that there was no sale of the suit land by Binko Toppo in favour of the Plaintiff and that Exts. 6 and 7 were fabricated documents and alternatively the sale, if any, was invalid and that the Plaintiff was not in possession of the suit land since 1954 as claimed by him, are based on proper appreciation of evidence by the Trial Court and they need no interference. It is his further submission that by virtue of the Orissa Development of Industries, Irrigation, Agriculture, Capital Construction and Resettlement of Displaced persons (Land Acquisition) Act, 1948 (Act 18 of 1948), the suit land being acquired there under it automatically vested in the State and Possession thereof was delivered by the State in favour of Hindustan Steel Limited, the predecessor of SAIL in 1955 and, therefore, Defendant No. 1. was competent to initiate eviction proceedings in the year 1981 when the Plaintiff was found to have encroached upon the same. It is his further submission that in any view of the matter, now lease deed has already been executed by the State in favour of Defendant No. 1, copy whereof has been filed for accepting as additional evidence and, therefore, Defendant No. 1 is fully competent to proceed with eviction proceedings against the Plaintiff under the provisions of the Public Premises (Eviction of Unauthorized Occupants) Act.

9. The main issue to be considered is whether the Plaintiff purchased Ac. 0.57 decimals of the suit land in the year 1954 from Binko Toppo and possessed a further extent of Ac. 0.20 decimals of the suit land in 1954 and since then has been continuing in possession or in the alternative, whether he has acquired title over the suit land by virtue of adverse possession since 1954 in the event it is found that there was no sale, or invalid sale.

10. With regard to his purchase the Plaintiff, who has been examined as P.W. 7, has stated in his evidence that after coming to Rourkela in 1953, he purchased Ac. 0.17 decimals of land from Binko Toppo for Rs. 90 in November, 1953 and constructed a Jumpuri and Khapara house thereon and continued to stay there and carry on his motor repairing work. Evidencing payment of such consideration, Binko Toppo executed a receipt in his favour on 15.01.1954. It is

further stated by him that this land was arranged by Duryodhan Deo and one Mangra. The receipt showing payment of consideration amount of Rs. 90 for such purchase has not been filed. Evidence of such purchase is not supported by any pleading in the plaint. Besides, even though it appears from the evidence that Duryodhan Deo was alive, the said person has not been examined as a witness. It also transpires from his evidence that subsequently Binko Toppo sold him Ac. 0.28 decimals of the suit land on 29.01.1954 for Rs. 85 in presence of witnesses, Abdul Razak an K.C. Birua and granted a receipt vide Ext. 7 in token of receipt of consideration money, Again Binko Toppo sold him another portion measuring Ac. 0.29 decimals of the said plot on 17.02.1954 for Rs. 90 and granted receipt vide Ext. 7 in token of receipt of consideration. It is further his evidence that besides the aforesaid purchases he also occupied a further extent of Ac. 0.20 decimals of land adjoining to the south and eastern portion of his purchased land on 17.02.1954 and constructed a shed over his purchased land of Ac. 0.29 decimals and used it as garage for repair of vehicles. Referring to the evidence of the Plaintiff, Learned Counsel for the Appellant contends that in 1962 the Plaintiff received notice vide Ext. 8 from Rourkela NAC. for demolition of his illegal construction made on the land measuring Ac. 0.29 decimals which he has purchased, Ext. 8 reveals that it is an order passed by the Executive Officer, Rourkela NAC directing the Plaintiff to demolish the building in respect of which provisional order had been passed on 18.4.1962. Ext. 8 makes no reference as to which land it relates to. No other document from the office of the NAC has been produced to show that the land in respect of which demolition order has been passed was Ac. 0.29 decimals, which the Plaintiff allegedly purchased from Binko Toppo. Coming to Ext. 6, it is found that it is scribed on a plain paper as a receipt describing Binko Toppo as the seller and the Plaintiff as the purchaser in respect of Ac. 0.28 decimals of land-out of Sabik Plot No. 540 under Sabik Khata No. 98 for consideration of Rs. 85. The receipt is dated 29.01.1954 which has been scribed by one Dilabar Badaik. The receipt bears the thumb impression purportedly given by Binko Toppo but the said thumb impression has not been attested by any body. In his evidence the Plaintiff has stated that plot No. 540 is a big plot measuring Ac. 1.01 (one acre and one decimal) Ext. 6, however, does not give the description in length and breadth or from the which side of the plot Ac. 0.28 decimals were sold. Similarly Ext. 7 is a plain paper receipt dated 17.2.1954 where Binko Toppo has been described as the seller and the Plaintiff as the purchaser and it is recited that is seller sold Ac. 0.29 decimals of land from very same Sabik Plot No. 540 for Rs. 90 and received the said consideration money. There is also no description of this Ac. 0.29 decimals of land either in length and breadth or from which part of the plot it was sold. No map with regard to the land sold under Exts. 6 and 7 has been attached with those receipts Ext. 7 also bears the thumb impression purportedly that of Binko Toppo but without any attestation.

11. In his cross-examination the Plaintiff (P.W. 7) has stated that he could not say the extent of land purchased by him from Binko Toppo. He has also admitted

that he could not say from which direction of plot No. 540, he purchased Ac. 0.28 decimals of land. He has further admitted that no measurement of the land took place at the time of purchase. The vendor only sold him and he possessed. It does not stand to reason that a person who purchased land on different occasions got delivery of possession of the same without there being any specification of land purchased and without any measurement and demarcation. He has further admitted that he had not seen the record of rights and of Binko Toppo in respect of the land at the time of purchase nor had he cared to enquire if Binko Toppo had any co-sharer, although he admits that all the Co-sharers of Binko Toppo were in possession of plot Nos. 540 and 534. He also admits that he did not suggest to Binko Toppo for getting sale deeds registered in respect of the sales. He has stated in his evidence that at the time of his purchase the suit land was standing in the name of Binko's husband and his brothers Jointly, but they were enjoying land separately. It is also stated by him that during 1956 some people from the Land Acquisition Office came and perused his papers and noted something in the records and in the year 1973 and 1974 the Tahasildar initiated encroachment case against him in respect of Ac. 0.17 decimals of land and on enquiry the Tahasildar recommended to the S.D.O. to settle the said land in his favour. He approached the settlement authorities and accordingly the said land was recorded in his name. Ext. 22 is the certified copy of the order of the Tahasildar dated 01.02.1975 passed in the encroachment case on which the Learned Counsel for the Appellant laid much emphasis and contended that the suit land was directed to be recorded in favour of the Plaintiff in that encroachment case as he was found to be in possession of the land. Ext. 22 reveals that the Plaintiff based his claim of possession of the land in encroachment case on the basis of purchase for which he produced an unregistered sale deed marked as Ext. 3 in that case, purportedly executed by Binika, wife of Dharam Das on 15.01.1954 appertaining to plot No. 534 of village-Mohulpali. It is, therefore, clear that the said land has no reference to the suit land which appertains to Sabik Plot No. 540. Apparently, the said land measuring Ac. 0.17 decimals was recorded in favour of the Plaintiff during the settlement operation as Hal Plot Nos. 610 and 611 as per the R.O.R. Published on 29.07.1981 under Ext. 21, the Hal Plot Nos. 610 and 611 however do not correspond to Sabik Plot No. 540 of course subsequently by order of the Commissioner, Land Records and Settlement, Orissa passed in R.P. Case No. 695 of 1982, the recording of Ac. 0.17 decimals of land in favour of the Plaintiff was cancelled and it was directed to be recorded in favour of Defendant No. 1. There is no separate encroachment case against the Plaintiff in respect of the suit land and even so-called money receipts under Exts. 6 and 7 with regard to the purchase of the suit land by the Plaintiff were not produced before the Tahasildar or even before the Settlement Authorities claiming for settlement of the suit land in his favour, although he has stated that during the settlement proceeding, the commenced in the year 1971, he claimed for recording of Ac. 0.94 decimals of land including the suit land in his favour and produced Exts. 6 and 7 before the Settlement Authorities, but the suit land was not recorded in his favour. He

admits that he did not prefer any appeal for non-settlement of the suit land in his favour. In case the Plaintiff produced an unregistered sale deed in respect of Ac. 0.17 decimals of land purchased by him from Binko Toppo on the basis of which he claimed settlement thereto and accordingly it was settled at the initial stage, there is no reason as to why the settlement authorities did not record the suit land in his favour in case he produced Exts. 6 and 7 before them. It is, therefore, crystal clear that the Plaintiff did not produce Exts. 6 and 7 before the Settlement Authorities and, therefore, did not prefer any appeal since there was no order of rejection of his claim for settlement of the suit land. He has admitted in his cross-examination that during the year 1956 he came to know that village-Mohulpali was acquired by the State for the Steel Plant, but he has admitted to have not filed any objection before the Land Acquisition Officer after, coming to know about acquisition. All the above circumstances revealed from the evidence of the Plaintiff lead one to believe that Exts. 6 and 7 were not in existence on the dates they were purportedly executed.

12. P.W. 1 is a witness, who speaks about the purchase of the suit land by the Plaintiff and his possession there over. He has stated that the Plaintiff was having his Jhumpudi and garage over about Ac. 1.00 acre of land and P.W. 1 had occasion to know the Plaintiff as he used to repair his trucks there till the year 1960. His evidence, however, reveals that he has no personal knowledge about Plaintiffs purchase. Plaintiff only told him that he purchased the land from two or three Adivasis under written documents out of which he has said to have seen two documents under one of which Plaintiff purchased Ac. 0.17 decimals whereas under other document he purchased Ac. 0.77 decimals of land. This part of evidence of P.W. 1 is not in consonance with the Plaintiff's case as pleaded. P.W. 1 has further admitted that he has no knowledge about the plot numbers of the purchased land. He is even unable to speak about the local name of the Plaintiffs land. He states that the name of Plaintiffs garage was "Kartar Singh Garage" which runs contrary to the evidence of the Plaintiff, who has stated that he ran his garage under the name and style, "Bhogar Motors" P.W. 1 claims his acquaintance with the Plaintiff as he owned some trucks for his transport business which he used to get repaired in Plaintiff's garage. He is, however, unable to give the registration number of anyone of his trucks. The evidence of P.W. 1, therefore, does not inspire confidence at all.

P.W. 2 was a driver under different private contractors and in that capacity he claims to have acquaintance with the Plaintiff as he was getting the trucks repaired in Plaintiffs garage. His evidence reveals that in November or December, 1953, Plaintiff occupied a vacant land by the side of Bisra Road and opened the garage and erected Katcha houses. He has said that garage was called "Kartar Singh Garage". It is no body's case that the Plaintiff possessed the suit land since 1953. P.W. 2 has admitted in cross-examination that he had no knowledge to whom the land possessed by the Plaintiff belongs and its plot number. His evidence is in no way helpful to the Plaintiff.

P.W. 3 is the scribe of Exts. 6 and 7. He has stated in his evidence that on the instruction of Binko Toppo he has scribed two documents (Exts. 6 and 7) in connection with the suit land in presence of witnesses- K.C. Birua, Razak @ Gulam and Isak and that the contents of Exts. 6 and 7 being read over to Binko, she admitted the same to be correct and put her L TI thereon. After Exts. 6 and 7 were scribed the witnesses signed and the consideration money was given to the executant. Thereafter, Binko delivered possession of the land sold to the Plaintiff. In cross-examination he has stated that while scribing Ext. 6 and 7 he was working as a teacher in Town U.P. School, Rourkela. He has further stated that Binko Toppo did not show her parcha in respect of the suit land for scribing the receipts, but she only showed rent receipts and with reference thereto, he put the khata numbers in the receipts whereas Binko Toppo furnished the plot numbers orally. He has admitted that he cannot say the boundary of the suit land as then existed and also presently existing. It is also admitted by him that at the time of scribing of Exts. 6 and 7, the suit land was recorded jointly in the name of Binko's husband and his brothers. He has also admitted that no measurement of the land took place at the time of scribing Exts. 6 and 7. He does not remember if he scribed any document prior to scribing Ext. 6. The fact that a school teacher was preferred to a professional deed writer for scribing Exts. 6 and 7 relating to sale transactions creates grave doubt about the correctness of the dates when they are purported to have been scribed.

P.W. 6, Kushal Chandra Birua is a witness to Ext. 6 and 7, who has proved his signature thereon and has stated that they were scribed in his presence, on the instruction of Binko Toppo and after the documents were written, Plaintiff paid the consideration money to the vendor and thereafter possession was delivered. Although, in his evidence he has spoken about the dates on which Exts. 6 and 7 were executed and the amount of consideration money passed there under, in his cross-examination he is unable to state about the date when he himself received possession of his own land, which had been occupied by another person. In paragraph-4 of his evidence he has stated about the boundaries of the suit land which does not tally with the boundaries described in Ext. 6 and 7. He has admitted in cross-examination that some lands of Binko Toppo were occupied by the State for the purpose of Steel Plant but he cannot State the extent of the land so acquired by the State. It is also admitted by him that the joint lands of Dharam Das, Husband of Binko Toppo, and the brothers of Dharam Das, namely, Johan, Bijya and Dayalu were acquired by the State. The evidence of P.W. 6 is apparently self contradictory.

P.W. 8 is another witness to Ext. 7. He has stated that on being called by PW. 6 he came to be a witness to sale of Ac. 29 decimals of land by Binko Toppo to the Plaintiff for which the consideration was fixed at Rs. 90. He states that Plaintiff paid the consideration money to Binko Toppo and thereafter the land was demarcated by way of chain and possession was delivered. The document was scribed by one Dilabar where after Binko Toppo put her L TI. PW. 8 has proved his signature on- Ext. 7. His evidence that the land was measured by chain and

possession was delivered runs contrary to the evidence of the Plaintiff and P.Ws. 3 and 6. In cross-examination, he has again stated that no measurement took place in his presence, but Binko Toppo told him that the measurement was done before hand, which is not body's case. He has however, admitted that Binko Toppo was "Oram" by the caste and her husband has got three to four brothers. It is also admitted by him that Binko Toppo was having a son by that time. His evidence with regard to measurement and delivery of possession of the land in prevaricating.

P.W. 10 is the Tax Daroga In NAC. (Steel Township). In pursuance of summons issued by the Court, he produced the register of assessment of holdings for the year 1976 maintained in the NAC. Office, Rourkela. The Register has been marked Ext. 16 and the entry therein in respect of Holding No. 868 was recorded in the name of the Plaintiff vide Ext. 15. His evidence reveals that the assessment was for the year 1976 and that the Plaintiff has paid the holding tax only once in that year and thereafter not paid or tendered any further tax. The next assessment commenced in the year 1983 in which Holding No. 868 was changed with new Holding No. 1604, His evidence in cross examination, however, reveals that garage of the Plaintiff does not relate to Holding No. 868 or 1304. Holding No. 868 relates to residential hose. The assessment register, therefore, does not prove that Holding No. 868 relates to the suit land as admittedly the Plaintiff was in occupation of other lands besides the suit land over which he had his Jhumpudi house.

P.W. 11 is a Junior Clerk in the office of Rourkela Regional Improvement Trust. In pursuance of summons, on the direction of the Secretary of the Trust, he produced the Ghara Register in Mouza-Mohulpali. The said register has not been marked as exhibit. But P.W. 11 has stated that Sl. 40 of the register disclosed the existence of a house on plot No. 534 belonging to one Kartar Sing (Plaintiff). The said entry has been marked as "X". It is evident from the register and also admitted by P.W. 11 that the register does not bear any certificate or signature of any Officer. It also does no contain any page number. P.W. 11 is also unable to say in whose handwriting the entries in the register were made and he has also no idea when and for what purpose. He states that the Regional Improvement Trust was started in the year 1978 and prior to that it was Special Planning Authority. Lastly, he has said that he has no knowledge if the register is a fake one. Although he does not admit, on perusal of entry at Sl. 40 it is evident that there is clear overwriting of Plot No. 534. In the circumstances, the register is of no use and no reliance can be placed thereon.

P.W. 12 is the Circle Officer, land Acquisition, Rourkela. In pursuance to the Trial Court's order he produced the land Acquisition Khatians in two volumes. He has stated that the said registers were prepared by the land Acquisition Department while land Acquisition proceedings were going on. Register No. 1. relating to the suit village Mohulpali has been marked Ext. 18 and the entries therein relating to Plot Nos. 534 and 540 at page-18 are marked Ext. 18/a. He has stated that the

registers are the copies of R.O.R. maintained by Revenue Agencies. He also states that remarks column against entries relating to Plot Nos. 534 and 540 indicate that one Kartar Singh is in possession of the land since 1954 basing on purchase. He has denied his knowledge as to how entries were made in the remarks column. In his cross-examination he has admitted that there was no official direction to enter the note of possession in the remarks Column. He further states that Vol. II of the Register is also a true copy of the R.O.R. Prepared simultaneously with Vol.- I. He admits that Vol.- II, however, does not contain any entry in the remarks column showing possession of "Kartar Singh" over Plot Nos. 534 and 540. He also admits that there is chance of incorporating the entries in the remarks column subsequently. Entry vide Ext. 18/ a shows that Plot Nos. 534 measures Ac. 1.01. In the remarks column the note of possession in favour of "Kartar Singh" has been entered in respect of whole of both the plots. It being not the case of the Plaintiff that he was in possession of the whole of Plot Nos. 534 and 540, the entry in the remarks column cannot be said to have been made correctly. Besides, to naked eyes it is quite apparent that the ink and the writing with regard to the entry made in the remarks column are quite different than those made in respect of other plots in the register. Apparently, the entry in the register in respect of the two plots has been made by somebody subsequently, which cannot have any acceptable evidentiary value.

13. Undisputedly, lands in village-Mohulpali along with other villages were acquired, by the State for establishment of a Steel Plant and Ancillary Industry in the year 1954 under sub-Section (1) of Section 3 of the Orissa Development of Industries, Irrigation, Agriculture, Capital Construction and Re-settlement of Displaced persons (Land Acquisition) Act, 1948 (Act 18 of 1948) Ext. A is the Gazette Notification dated 22.02.1954 to that effect. As stated by D.W. 1, the Additional Town Administrator, Rourkela Steel Plant, Ext. E is the certificate of handing over possession of the acquired land of village-Mohulpali by the Zone Officer on behalf of Special Officer, Land Acquisition to the Land Officer of the Hindustan Steel Limited, Rourkela On 17.07.1955. Ext-F is the Possession Register and entry therein at Page-9 vide Ext. F/1 reveals that Plot Nos. 534 and 540 measuring respectively Ac. 0.89 and Ac. 1.01 belonging to Johan Christian, Bijaya Christian and Dharam Das Toppo (husband of Binko Toppo) and Dayalu Christian were taken possession on 17.07.1955. It is stated by D.W. 1 that the suit land was lying vacant at the time of taking possession. Admittedly in the hal Settlement the suit land has been recorded in the name of Defendant No. 1. It is also stated by him that at the time of acquisition of the suit land compensation was paid to the recorded owners, namely, Johan Christian and ors. The Defendants produced the receipt under which the recorded owners, namely, Johan Christian and others received compensation of Rs. 9863 & 8 annas and 11 paise in respect of the suit holding No. 98. The signatures of Zone Officer, K.C. Mohanty and Mr. Swapneswar Panda on the receipt have been proved as Ext. H and H/1 respectively. The receipt, as per the evidence of D.W. 1, is the duplicate copy prepared simultaneously with the original. It also contains the signatures

and LTIs of the recorded owners though those have not been identified, rightly because D.W. 1 was not present then. Nothing has been brought out in the cross-examination of D.W. 1 to doubt the genuineness of Exts.- E, F and the receipt under which the recorded owners of suit land received compensation money.

14. The evidence of D.W.s. 4 and 5 speaks of Plaintiff's possession since the year 1978 and 1983. D.W. 4 also state that after acquisition, the possession of the suit land was given to Rourkela Steel Plant in his presence and at that time no structure was standing thereon.

15. In the face of official documentary evidence vide Exts.- A, E, F and H and the receipt showing payment of compensation to the recorded owners of the suit land and the oral evidence led by D.Ws. and keeping in view the suspicious circumstances elicited from the evidence of the Plaintiff and other P.Ws. I am fully in agreement with the findings of the Trial Court that Exts. 6 and 7 were subsequent creations made by the Plaintiff and that the Plaintiff was never in possession of the suit land since 1954 on the basis of purchase as claimed by him and, on the contrary, it is Defendant No. 1. who got possession of the land on acquisition by the State and that the Plaintiff only came into possession sometime in between late 1970s and early 1980s. Even otherwise, Binko Toppo could not have sold the joint property in favour of the Plaintiff in 1954.

16. It is contended on behalf of the Appellant that assuming that Binko Toppo did not sell the land to the Plaintiff or that the sales were invalid, in view of the earlier possession of the Plaintiff over the suit land since 1954 and the land having not been transferred in favour of Defendant No. 1 by the State, even if Plaintiff's title to the land could not have been declared by way of adverse possession, the Learned Trial Court should have declared possessory title of the Plaintiff as against the Defendant, even in absence of the State as a party and should have enjoined Defendant No. 1 from proceeding with the eviction proceedings initiated under the provisions of Public Premises (Eviction of Unauthorized Occupants) Act.

At this stage, it is necessary to consider the petition filed by the Respondent for accepting the copy of lease deed dated 01.07.1993 executed by the State in favour of Defendant No. 1 in respect of the acquired land as additional on the ground that the lease was executed during the pendency of this appeal. The petition is registered as Misc. Case No. 88 of 2011. Evidently the lease deed could not have been produced during the pendency of the suit. In his objection, the Plaintiff-Appellant has admitted the execution of the lease deed transferring right, title and interest in favour of Defendant No. 1. by the State. The only objection is that the question of execution of lease is being raised at a belated stage in this appeal. The copy of the lease deed filed along with the petition is merely a xerox copy which cannot be entertained as a piece of evidence and marked exhibit. Accordingly the petition filed by Respondent No. 1 for adducing additional evidence stands rejected and Misc. Case No. 88 of 2011 stands disposed of. However, in view of the admission of the Appellant in his objection

about the execution of the deed conferring right, title and interest in the land on Defendant No. 1 and in view of the fact that the Plaintiffs possession over the land had not ripened by the time of initiation of eviction proceeding by Defendant No. 1 for creating adverse title in his favour, no relief of injunction can be granted in favour of the Plaintiff-Appellant.

In the light of the discussions made above, I find no infirmity in the impugned Judgment and decree of the Trial Court. The appeal is accordingly dismissed. Costs to abide the result