
(2010) 11 OHC CK 0055
In the Orissa High Court
Case No : Writ Petition (C) No. 6939 of 2010

Raj Kishore Prasad

APPELLANT

Vs

Suresh Prasad and Another

RESPONDENT

Date of Decision : 01-11-2010

Acts Referred:

Limitation Act, 1963 — Section 5

Orissa Survey and Settlement Act, 1958 — Section 12B, 15

Citation : (2011) 111 CLT 393 : (2011) 1 OLR 115

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

Bench : Single Bench

Final Decision : Allowed

Judgement

B.K. Patel, J.—Heard.

2. In this writ petition the Petitioner has assailed the legality of order dated 21.11.2009 passed by learned Joint Commissioner, Settlement and Consolidation, Sambalpur dismissing the Revision petition No. 162 of 2008 preferred by the Petitioner against the opposite parties u/s 15(b) of the Orissa Survey and Settlement Act, 1958 (for short "the Act") solely on the ground that the petition is barred by limitation.

3. It appears that Petitioner's father purchased the case land from opposite party No. 2 in the name of Petitioner in the year 1975 when Petitioner was minor. Record of rights was finally published in the year 1981 after which the Petitioner attained majority. Reasons for dismissal assigned in the impugned order reads as follows:

Here in this case the Petitioner has made inordinate delay in filing the revision petition. Although the advocate for the Petitioner has stated in his W.A. the reason for not filing the case in time, he has not moved any application u/s 5 of the Limitation Act. The reasons stated in the writ is also not satisfactory. The sale transaction took place in the year 1972 when the Petitioner was eight years old.

He attained majority in the year 1982. He would have agitated his claim for recording in the year 1982 or in the year 1983. But he remained silent till 2008. Thus he made delay of 26 years in filing the present revision for correction of ROR. Hence the reasons stated by the learned advocate for the Petitioner is not genuine and satisfactory.

In view of the above observation, it can be concluded that the present forum has the limited jurisdiction in passing of orders for correction of ROR if the case is filed within the statutory period of one year from the date of final publication. Here, the Petitioner has delayed in availing the scope of Section 15(b). Hence the claim of the Petitioner is dismissed.

4. Placing reliance on decision of Division Bench of this Court in *Krushna Chandra Mahakul Vs. State of Orissa and Others*, it is contended by the learned Counsel for the Petitioner that if the Petitioner has not been able to explain sufficiently the entire period of delay in filing the revision, his revision should not be thrown out only on the ground of delay in filing the revision even before issuance of notice to the opposite parties. There is no rival claim against the Petitioner. In the fitness of the case ROR should have been updated in exercise of power u/s 15(b) of the Act.

5. In *Krushna Chandra Mahakul v. State of Orissa and Ors.* (supra) it has been observed that there is no provision u/s 15(b) to the effect that when an application is filed beyond the period of one year from the date of final publication u/s 12-B, such application would be entertained only if the Petitioner furnishes sufficient cause for non-filing the application within the period of one year from the date of publication of record of rights. It has been held:

6. Section 15(b) of the Orissa Survey and Settlement Act, 1958 is different from Section 5 of the Limitation Act, 1963 which is quoted hereinbelow:

5. Extension of prescribed period in certain cases:

Any appeal or any application other than an application under any of the provisions of Order XXI of the Code of Civil Procedure, 1908, may be admitted after the prescribed period. If the Appellant or the applicant satisfies the Court that he had sufficient cause for not preferring the appeal or making the application within such period.

Whereas u/s 5 of the Limitation Act, 1963 the Appellant has to show sufficient cause for not preferring the appeal or making the application; as the case may be within the period prescribed u/s 15(b) of the Orissa Survey and Settlement Act, 1958 there is no such requirement. Hence, even if the Petitioner has not been able to explain sufficiently the entire period of delay of four years eight months and twelve days in filing the revision, his revision should not be thrown out only on the ground of delay in filing the revision beyond the period of one year. In each case, the authority hearing the revision will have to consider as to whether ends of justice require entertaining the application for revision beyond

the period of one year or as to whether any valuable right has accrued to some other party on account of delay in filing the application for revision on account of which the revision petition should not be entertained beyond the period of one year.

6. Contrary to the mandate in the cited decision, in the present case learned Joint Commissioner, Settlement and Consolidation, Sambalpur appears to have summarily thrown out the revision on the ground of delay. Therefore, the impugned order is not sustainable and is quashed. The matter is remanded to the learned Joint Commissioner, Settlement and Consolidation, Sambalpur to consider the revision afresh keeping in view the observations indicated above after giving opportunity of being heard to the parties. Accordingly, the writ petition is allowed.

7. Urgent certified copy of this order be granted on proper application.