

(2007) 03 OHC CK 0032
In the Orissa High Court

Santosh Kumar Mohanty and Others

APPELLANT

Vs

Revenue Divisional Commissioner, Central Division and
Others

RESPONDENT

Date of Decision : 21-03-2007

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Limitation Act, 1963 — Section 5

Citation : (2007) 104 CLT 65 : (2007) 1 OLR 595

Hon'ble Judges : Sanju Panda, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Sanju Panda, J.—This writ application has been filed by the petitioners challenging the order dated 11.8.2006 passed by the R.D.C., Central Division, Cuttack, in R. P. Case No. 13 of 2005 in a proceeding under Orissa Survey & Settlement Act, 1962.

2. The brief facts of the case are as under:

Opposite Party No. 4, Kishore Ch. Mohapatra, filed the aforesaid revision case before the Revenue Divisional Commissioner, Central Division, Cuttack for correction of R.O.R. He is the western adjacent neighbour of the present petitioners in this case. The disputed suit sabik plot No. 2275 in sabik khata No. 656/2/402 situated in Mouza-Baripada, Ward No. 10 in Baripada Town of Mayurbhanj District measuring an area of Ac.0.25 decimals stood recorded in the name of one Harapriya Devi @ Mohapatra as per sabik settlement record of right of the year 1935-36. Said Harapriya Devi died leaving behind her son Khirod Oh. Mohapatra who also died after the settlement operation. The present opp.party No. 4, his brother, mother and sister are the legal heirs of said Khirod Ch. Mohapatra and opp.party No. 4 being the eldest son of the family has filed the revision for correction of R.O.R. and map of the suit plot which was wrongly recorded in Hal settlement to the extent of only Ac. 0.22 decimals under Hal

Settlement Khata No. 48, plot No. 384 in Mouza-Baripada, Ward No. 10 in Baripada town.

3. His further case is that during the settlement operation Khirod Ch. Mohapatra has filed an objection in Rent Case No. 1792/ 1982 for correction of the area. As per the order of the A.S.O., the Amin made a local enquiry of the field and found the area of possession of the objector was to the extent of Ac. 0.25 decimals instead of Ac.0.18 decimals. Accordingly, Amin has submitted his report along with the Amin badar and trace before the Assistant Settlement Officer who verified all those records and passed orders on 8.4.78 for correction of the record from Ac.0.18 decimals to Ac.0.25 decimals. But the said correction was not carried out in the revised area settlement and the land holders have been possessing the area all along with his co-sharers till filing of the revision. The dwelling house over the said land is situated on the west and south and is enclosed by a compound wall and only the eastern boundary is open. Taking advantage of the above recording the petitioners put a pillar on 6.8.2005 encroaching eastern side Ac.0.03 decimals of land. The said revision was filed in the year 2005 and opp. arty No. 4 has explained that Khirod Ch. Mohapatra was suffering from heart trouble since 1984 for which he could not follow the settlement proceeding and the said land was recorded erroneously and he has also not received the final R.O.R. After his death, his son obtained the relevant documents from the settlement office and came to know about the reduction area. Hence, he filed the revision for correction of R.O.R. along with an application u/s 5 of the Limitation Act.

4. The present petitioners have filed their objection to Section 5 of the Limitation petition and also filed objection on the merit of the case. In the present writ application the learned Counsel for the petitioners have contended the on 11.8.2006 the matter was posted for hearing on the question of limitation, but the opposite party No. 1 has disposed of the case on merit. After perusal of the records it is revealed that the matter was posted for hearing and note of argument on merit has also been filed on the said date.

5. After verifying all the records, the Commissioner has directed the Tahasildar for a field enquiry and called for a status report on 8.8.2006. Considering all the above materials and after hearing the parties he has condoned the delay and allowed the revision and directed for correction of the Hal settlement R.O.R. and map in respect of the disputed land in the name of the present opp. party No. 4 along with his co-sharers.

6. The Commissioner has considered all the materials on record and passed the order in accordance with law. This Court by exercising the jurisdiction under Article 226 and 227 does not exercise the powers of an appellate jurisdiction. It does not review or reweigh the evidence upon which the determination of the inferior Court purports to be based. It demolishes the order which it considers to be without jurisdiction or palpably erroneous but does not substitute its own view. For the reason aforesaid as there is no illegality or infirmity in the said

order to be interfered with by this Court. The R.O.R. neither create title nor extinguish title and as such this dismissal will not preclude the petitioner from availing any other remedy which they may have entitled.

The writ application is accordingly dismissed.