

(2019) 02 OHC CK 0064
In the Orissa High Court
Case No : R.S.A.No.280 Of 2008

Smt.Geetarani Padhi

APPELLANT

Vs

State Of Orissa And Others

RESPONDENT

Date of Decision : 28-02-2019

Acts Referred:

Limitation Act, 1963 — Article 65
Orissa Survey And Settlement Act, 1958 — Section 42
Limitation Act, 1963 — Section 63
Code Of Civil Procedure, 1908 — Order 8 Rule 5

Citation : (2019) 02 OHC CK 0064

Hon'ble Judges : Dr. A. K. Rath, J

Bench : Single Bench

Advocate : Ramakanta Mohanty, Sumitra Mohanty, Swayambhu Mishra

Final Decision : Disposed Of

Judgement

Dr.A.K.Rath, J

1. This is a plaintiff's appeal against confirming judgment in a suit for a declaration that the suit property is the stitiban property of the plaintiff,

recovery of possession in the event she is dispossessed from the suit land during pendency of the suit, permanent injunction and correction of R.O.R.

2. The case of the plaintiff was that the suit property appertaining to khata no.112 C.S.plot no.360 ad-measuring Ac.0.06 dec. of mouza Barbaria

originally belonged to Binanda Das. Binanda Das died leaving behind him two sons, Khetra and Surendranath. Khetra died issueless. Plaintiff is the

only daughter of Surendranath. C.S. record of rights was published in the name of Nilamadhab Jew marfat Khetra Das. After death of Khetra, she

inherited the said property. The M.S. record of rights was prepared in her name. She was in possession of C.S.Plot No.360. C.S. Plot no.360 is

adjacent to of C.S. Plot Nos.361 and 362. C.S. Plot No.362 was recorded as Anabadi. C.S. Plot no.362 corresponds to M.S. Plot nos.973, 974 and

916. The road passes over a portion of M.S. Plot nos.915, 914 and other plots. The settlement authorities had wrongly prepared M.S. R.O.R. as well

as map. She filed a demarcation suit. After disposal of the said suit, possession of C.S. plot no.360 was delivered to her. But then, the defendant no.1

finally published the map wrongly. Taking advantage of the same, the Addl. Tahasildar took steps to evict her from the suit plot. With this factual

scenario, she instituted the suit seeking the reliefs mentioned supra.

3. The defendants were set ex parte.

4. To substantiate the case, the plaintiff had examined one witness and on her behalf, two documents had been exhibited. The trial court dismissed the

suit holding inter alia that the suit was instituted after ten years of publication of R.O.R. and, as such barred by limitation. Unsuccessful plaintiff filed

appeal before the learned District Judge, Balasore, which was subsequently transferred to the court of the learned Ad hoc Additional District Judge,

Balasore and renumbered as T.A.No.15/93 of 2007/2004. The appeal was eventually dismissed.

5. This appeal was admitted on the following substantial questions of law:

â??(I) Whether the learned courts below have committed an error in construing the plaintiff-appellantâ??s suit, as a suit for correction of record of rights, as

contemplated under section 42 of the Orissa Survey and Settlement Act and dismissing the suit on the ground of limitation, even through the prayer made by the

plaintiff was one for declaration of title, confirmation of possession and in the alternative for recovery of possession as well as for permanent injunction along with

other ancillary reliefs ?

(II) Whether the learned courts below have acted contrary to law in dismissing the suit of the appellant-plaintiff, even though the defendants were set ex parte and

did not file any written statement nor cross-examined the plaintiff, who filed his evidence on affidavit instead of decreeing the suit under the provisions of Order-VIII,

Rule 5 C.P.C. ?â??

6. Mr.Ramakanta Mohanty, learned Senior Advocate for the appellant argues with vehemence that the suit was instituted for declaration of title, permanent injunction

and consequential reliefs. The plaintiff asserts that she has title over the suit land. Thus, Article 65 of the Limitation Act will apply. Learned trial court has committed

a patent error in holding that the suit is governed under Section 42 of the Orissa Survey and Settlement Act.

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7. Per contra, Mr.Swayambhu Mishra, learned A.S.C. for the respondents submits that in the plaint the plaintiff stated that she has installed the deity.

R.O.R. has been published in the name of deity, but the suit has been instituted by the plaintiff, not by the deity. Thus, the suit is not maintainable. In

paragraph-14 of the plaint, the plaintiff asserts that the cause of action arose on 31.8.1988. The suit was instituted on 16.1.1998. Under Section 58 of

the Limitation Act to obtain any other declaration, the period of limitation is three years when the cause of action accrues. Thus the suit is barred by

limitation.

8. The suit was filed for declaration that the suit land is the stitiban property of the plaintiff, recovery of possession in the event she is dispossessed

from the suit land, permanent injunction and correction of R.O.R. The courts below fell into patent error that the suit is governed under Section 42 of

the Orissa Survey and Settlement Act. Learned trial court dismissed the suit only on the ground of limitation. In view of the same, the point urged by

the learned A.S.C. does not require consideration, since the trial court has not delved deep into that matter.

9. Resultantly, the impugned judgments are set aside. The matter is remitted back to the learned trial court for de novo hearing. It is open to the

defendants to file written statement. In order to avoid further delay, the parties shall appear before the trial court on 26.3.2019, on which date the trial

court shall fix a date of hearing and dispose of the suit within a period of six months thereafter. The L.C.R. be returned back. Since the matter is

remitted back, this Court refrains itself from expressing any opinion on the substantial questions of law as well as the contentions advanced by the

learned A.S.C.

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