

(1985) 11 OHC CK 0002
In the Orissa High Court
Case No : First Appeal No. 111 of 1975

State of Orissa

APPELLANT

Vs

Kanehyalal Jhunhunwalla and Another

RESPONDENT

Date of Decision : 08-11-1985

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 11, 80
Land Acquisition Act, 1894 — Section 18
Limitation Act, 1963 — Article 64, 65

Citation : (1986) 61 CLT 55

Hon'ble Judges : P.C. Misra, J; B.K. Behera, J

Bench : Division Bench

Advocate : Advocate General, for the Appellant; A.K. Padhi, for the Respondent

Final Decision : Allowed

Judgement

P.C. Misra, J.—The Defendant is the Appellant against the judgment and decree passed by the learned Subordinate Judge of Bolangir in Title Suit No. 55 of 1968. The Suit is one for recovery of possession in respect of the lands mentioned in Schedules 1-A, 1-B and 1-C of the plaint after demolition of all structures standing thereon or in the alternative for recovery of compensation. amounting to Rs. 1,18,950/- together with damages amounting to Rs. 15,000/- and interest thereon from the Defendant.

2. The case of the Plaintiffs in short, may be stated as follows:

There was an agreement on 1-1-1940 between ShriRajendra Narayan Singh Deo the then Ruler of the ex-State of Patna and Messrs Surajmal Nagarmal of Calcutta under which a monopoly right for setting up of rice and oil mills at Titilagarh was settled on the latter. As per the terms of this agreement Surajmal Nagarmal was to promote and set up a Company to carry on the aforesaid monopoly business. Accordingly a public limited company named and styled as Bolangir Trading Company was set up. The Plaintiffs alleged that Messrs Surajmal Nagarmal transferred all their interests under the monopoly agreement in favour

of that Company. The Plaintiff No. 1 was the share-holder and Director of the said Company. It has been further alleged that the ex-State of Patna acquired A. 90.47 decimals of lands (the suit lands) from different tenants at the cost and for the benefit of the Company for setting up a rice mill. This, according to the Plaintiffs, was done in pursuance of the terms of the aforesaid agreement. The lands acquired are situated in two different adjoining villages, viz. Titilagarh and Sirvata and the same was dealt with in Revenue Case No. 29 of 1938 by the S.D.O., Titilagarh in which the said lands were conveyed to the Company. The Bolangir Trading Company thus became the owner of the lands and possessed the same by constructing rice and oil mills, godowns and residential quarters for the staff etc. The Plaintiffs alleged that the said rice and oil mills were running well till 1951 when it incurred loans. A sum of Rs. 2,47,866.86 paise became outstanding dues of the Company payable to Plaintiff No. 1 and the same has been shown as loan due to the Plaintiff No. 1 in the balance-sheet of the Company. Then on 22-6-1954 the said Company leased out the mills and the premises which include all surrounding lands to Ganesh Trading Company (Plaintiff No. 2) under a registered deed for an annual premium of Rs. 3.000/- for a period of 10 years with an option of renewal and delivered possession thereof to the sole proprietor of the said Company, namely Gangaram Saraf. According to the Plaintiffs, a deed of assignment dated 25-3-1957 was executed by Gangaram Saraf in favour of Plaintiff No. 2 and his brother and they became the sole owners of Ganesh Trading Company and began possessing the mills, the premises lands and all the properties of that Company in Titilagarh and Sirvata as lessees. It is stated that the lease was there- after being renewed from time to time. The Bolangir Trading Company having failed to repay its debts to Plaintiff No. 1, delivered possession of the mills, premises, lands and all the constituent property as Titilagarh 2nd Sirvata under an agreement dated 9-6-1958 to enjoy the same and get his dues with interest adjusted. By virtue of the said agreement Plaintiff No. 1 has been possessing all the properties of Bolangir Trading Company with. the power to dispose thereof in satisfaction of his dues. According to the Plaintiffs, they came to know in the year 1960 that the suit lands in village Titilagarh described in Schedules 1-A and 1-B of the plaint have been unauthorisedly occupied by the State of Orissa which had conducted office and residential buildings without the permission and consent of any of the Plaintiffs. Further on 1-4-1962, the State Government unauthorisedly and forcibly occupied the lands described in Schedule C of the plaint and set up a Rural Industrial Estate thereon despite protests of both the Plaintiffs. It is further alleged that the State of Orissa has no manner of right, title or interest over the suit lands and therefore the Plaintiffs are entitled to recover vacant possession thereof after demolition of the structures raised by the State of Orissa, the Defendant. In the alternative compensation as indicated above was claimed to be recovered from the Defendant. The Plaintiffs had served a notice u/s 80, CPC prior to the filing of the suit and after expiry of the statutory period the suit was filed seeking the aforesaid reliefs.

3. The Defendant in its written statement contended that the suit lands were all along the property of the Government over which buildings have been constructed. It has stoutly denied the allegations of the Plaintiffs that they had been in possession of the suit lands. All the plaint allegations have been denied and the Plaintiffs have been put to strict proof of all the allegations on the basis of which they claim title and possession over the suit lands. It was pleaded in the alternative that in the event the Plaintiffs are found to be entitled to the suit lands they should be compensated for the same instead of granting a decree for recovery of possession, inasmuch as, substantial structures have been raised by the State Government thereon and no, useful purpose will be served by demolishing the said buildings. They however asserted that the rate at which compensation has been claimed by the Plaintiffs is excessive and they are not entitled to any compensation more than the prevailing market rate.

4. Originally plaint I-C schedule land was described to be appertaining to village Titilagarh which was amended at the instance of the Plaintiffs to be appertaining to village Sirvata. After the amendment of the plaint as stated above, on 19-10-1974 the Defendant filed its additional written statement on 28-11-1974 further contending that the Plaintiffs are not the owners of the suit lands and they had no right, "title or possession over the same. It was further stated that Plaintiff No. 1 had not acquired any right or title to the suit lands by virtue of the agreement dated 8-6-1958 entered between Bolangir Trading Company and the Plaintiff No. 1. Besides it was alleged that the Plaintiff No. 1 had received the amount due to him from Bolangir Trading Company from out of the compensation awarded in Misc. Case Nos. 9/60 and 10/61 of 1963 of the said Court. The plaint was amended for the second time after close of hearing of the suit. In the said amendment the original prayer declaration of Plaintiffs' title over the plaint schedule lands stood deleted. The Defendant filed another additional written statement taking the plea that the suit as framed was not maintainable and the prayer for recovery of possession cannot be granted in the absence of the prayer for declaration of title. It was further alleged that the suit properties are Nazul lands situated within the Notified Area Council of Titilagarh of which the State is the owner according to the provisions of Rule 1 of the Nazul Rules and consequently the Plaintiffs have no right to evict the Defendant from the suit lands.

5. The learned Subordinate Judge framed the issues which arise out of the pleadings and after giving opportunities to the parties to adduce evidence recorded the following findings:

(i) M/s. Bolangir Trading Company Ltd. is a registered Company of which the Plaintiff No. 1 was a shareholder and a Director.

(ii) Bolangir Trading Company was the owner in possession of the disputed lands.

(iii) The Plaintiff No. 1 has satisfactorily proved his possessor title over the suit lands and the Defendant has failed to prove its ownership over the same.

Consequently Plaintiff No. 1 is entitled to the possession of the disputed lands.

(iv) The plea taken in the additional written statement that the suit properties are Nazul lands for which a decree for recovery of possession cannot be granted is not supportable and the suit in the present form is maintainable.

(v) In the facts and circumstances of this case it would not be proper and equitable to direct demolition of the structures and recovery of possession of the vacant land. It is a fit case where the Plaintiffs should be compensated in terms of money.

(vi) The Plaintiffs are entitled to realise Rs. 91,195/- as compensation and Rs. 15,000/- as damages thus making a total at Rs. 1,06,195/-. They are also entitled to pendente lite and future interest at the rate of 6 per cent per annum on Rs. 91,195/- from 18th June, 1968, the date of institution of the suit till its realisation.

(vii) A valid notice u/s 80, CPC was served on the Defendant prior to the institution of the suit and thus the suit cannot be dismissed for want of notice as urged by the Defendant.

6. On the aforesaid findings the suit was decreed to the extent as indicated above.

7. In this appeal learned Advocate-General appearing for the Appellant has challenged the findings recorded by the learned Subordinate Judge against the State.

8. The primary question necessary to be determined in this litigation is as to whether the Plaintiffs had right, title and interest in respect of the suit properties so as to be entitled to the reliefs claimed in the suit. The learned Advocate-General has strenuously urged that the Plaintiffs had no title nor possession in the suit properties and therefore the suit is not maintainable either under Article 64 or under Article 65 of the Indian Limitation Act. It may be noted that in the original plaint the Plaintiffs prayed for declaration of title and recovery of possession of the suit lands after demolition of all structures, fences, walls etc, standing thereon and alternatively for compensation of a sum of Rs. 1,18,950/- against the Defendant. The prayer for declaration of title was deleted by an amendment of the plaint in the trial court and therefore the plaint as it stands after amendment, prays for recovery of vacant possession of the suit lands on the basis of Plaintiffs' title or possession keeping the alternative relief prayed for in tact. Under the new Limitation Act all suits for possession of immovable property shall have to be brought under two categories:

(i) Suits based only on the right of previous possession and not proprietary title.

(ii) Suits based on proprietary title.

The first category of cases is governed by Article 64 and time runs from the date when the Plaintiff while in possession has been dispossessed or has discontinued

in possession. The second category of cases is governed by Article 65 and time runs when the possession of the Defendant becomes adverse to the Plaintiff. Under the present Act, in a suit based on title even if dispossession is also alleged the Defendant can succeed only if he proves that his possession has become adverse to the Plaintiff beyond 12 years of the suit. The Plaintiff need prove only his title and is not required to show that he was in possession within twelve years of the suit. In this case the relief of recovery of possession is based on title as well as previous possession. Learned Advocate-General has argued that in the event the Plaintiffs fail to establish their title to the suit properties their claims cannot be maintained on the basis of previous possession against the State Government who is the real owner of the property. The proposition that a Plaintiff who himself was a trespasser and has been evicted there from can maintain a suit for recovery of possession, but not against the true owner unless he has acquired valid title by adverse possession, is well recognised in law. In the event Plaintiffs title to the suit property is found which has not been lost by acquisition of title by adverse possession by the Defendant he can always maintain a suit for possession against the trespasser. But in a suit for recovery of possession based on previous possession the Plaintiff can succeed only if the Defendant is not the true owner of the property in question.

9. The Plaintiffs' case in the plaint is that at the cost of the firm M/s. Surajmal Nagarmal and for the benefit of M/s. Bolangir Trading Company Limited an area of 90.47 acres of land in Titilagarh and Sirvata was acquired by the then State authorities from different tenants and the same was conveyed to M/s. Surajmal Nagarmal. It has further been pleaded that M/s. Bolangir Trading Company Limited which came into existence in pursuance of the terms of an agreement made between M/s. Surajmal Nagarmal and the Maharaja and Ruler of Patna, owned and possessed the said landed properties, constructed the rice and oil mills thereon and the land was also utilised by it by constructing staff quarters, residential quarters and godown etc. The Plaintiffs have referred to a pattagranted by the S.D.O. Titilagarh in Revenue Case No. 29 of 1938-39. It has been alleged that Plaintiff No. 1 was the Director and share-holder as also the creditor of the said Company. The further case of the Plaintiffs is that by the year 1954 the said Bolangir Trading Company had already stopped its business due to internal differences and other causes and on 22-6-1954 it leased out the mills, its premises and other properties to Plaintiff No. 2 for annual premium of Rs. 3,000/- for a period of 10 years with an option of renewal and delivered possession thereof to one Gangaram Saraf who was the sole owner of Ganesh Trading Company. The further pleading of the Plaintiffs is that under a deed of assignment dated 15-3-57 the said Gangaram Saraf assigned the fences of all the said lease in favour of Ganesh Trading Company of which Mr. Saraf and his brother (Shri Ram Prasad Tulsia) are the present owners. It is asserted that Plaintiff No. 1 by a deed of agreement dated 3-6-53 obtained possession of the mill, machineries, lands and premises situated at Titilagarh and Sirvata from the said Bolangir Trading Company with power to dispose them of in satisfaction of

his dues and thus Plaintiff No. 1 also acquired interest in the said properties. All these allegations in paragraphs 2, 4 and 5 of the plaint have been traversed in paragraphs 2, 4 and 5 of the written statement of the Defendant in which it has been stated that all these questions had been raised and decided by the learned Subordinate Judge, Bolangir in Misc. Case Nos. 9/60 and 10/61 of 1963 in which it was held that Plaintiff No. 1 was the owner of the rice mill in question and also the area on which the said mill stands but the matter is sub judice in appeal before the Hon'ble High Court of Orissa for which the Defendant is not bound by the findings recorded by the learned Subordinate Judge, Bolangir. In this view of the matter we would first examine as to how far and to what extent the dispute between the parties now raised in the suit had been decided in the land acquisition proceeding by the learned Subordinate Judge, Bolangir and as to whether the findings in the said proceeding would operate as res judicata so far as this suit is concerned.

10. The judgment of the land acquisition case which has been referred to in paragraph 2 of the written statement is Ext. 14 and the judgment of the appeal arising therefrom which was sub judice on the date of filing of written statement is Ext. 17 in this case.

11. The land acquisition case before the learned Sub-ordinate Judge, Bolangir was in pursuance of a reference u/s 18 of the Land Acquisition Act, 1894 for determination of right and title of the Plaintiffs to receive the compensation of lands acquired for Sambalpur-Titilagarh Railway Project and for determination of the value of the lands. In the said proceeding the certified copy of the deed of agreement between the Maharaja and Ruler of the ex-State of Patna and the proprietor of the firm M/s. Surajmal Nagarmal and various other documents were filed and relied upon. The learned Subordinate Judge on a consideration of the fact, documents, and circumstances came to a conclusion that:

(i) Bolangir Trading Company Limited stepped into the shoes of the firm M/s. Surajmal Nagarmal and had full interest in the rice mill and the lands acquired for installation of the mill and the State had nothing to do with it.

(ii) The Petitioner Kanehyalal Jhunjhunwala (Plaintiff No. 1 - Respondent No. 1) got possession of the holdings in question from Bolangir Trading Company limited in 1958 and he was in possession of the lands in question till the same were acquired by the Railway.

(iii) The Petitioner Kanehyalal Jhunjhunwala (Plaintiff No. 1 - Respondent No. 1) is entitled to receive the compensation by virtue of his possession of the acquired lands even though his title in the lands cannot be found.

In view of these findings of the Land Acquisition Collector the plea taken in the written statement was that the Defendant was nor bound by the said findings as the matter is pending in appeal in the High Court. The judgment in the appeals before the High Court (First Appeal Nos. 73 and 74 of 1966) is Ext. 17 in the suit. The Hon'ble Judge who disposed of the said appeals has observed in

paragraph 6 of the judgment as follows:

I have carefully gone through the grounds of appeal in both the cases and it appears from them that the Appellant has only challenged the quantum of compensation fixed by the Court below and not the Respondent's right to the same. Similarly, in the cross objections filed by the Respondent, a higher rate of compensation than what has been granted by the learned Subordinate Judge has been claimed. In this state of things, it is not necessary in these appeals to go into the question of title of the Respondent and his right to receive compensation for the lands acquired. On this point, the finding of the learned Subordinate Judge, must be held to have become final and conclusive. Therefore, the argument advanced by the learned Counsel for Appellant challenging the Respondent's right to receive the compensation cannot be accepted.

It is thus seen that the findings of the learned Subordinate Judge as regards the question of title and right to receive compensation by Kanehyalal Jhunhunwala (Respondent in the said appeals and Plaintiff" No. 1 - Respondent No. 1 in this appeal) were held to have become final and conclusive between the parties.

12. Learned Counsel for both the parties have relied upon the decision reported in Raj Lakshmi Dasi and Others Vs. Banamali Sen and Others, and both of them agree that the findings recorded by the learned Subordinate Judge in the land acquisition proceeding shall operate as res judicata as the test of res judicata is the identity of title in the two litigations and not the identity of the actual property involved in the two cases. It has been well settled by a large number of decisions that apart from the rule of res judicata in Section 11 of the CPC a plea of res judicata can be founded on general principles of law. While applying the general principle of res judicata all that is necessary to establish is that the Court that heard and decided the former case was a Court of competent jurisdiction. We must, therefore, hold that the aforesaid findings recorded by the learned Subordinate Judge in the land acquisition proceedings (Ext. 14) which were confirmed in appeal (vide Ext. 17) shall operate as res judicata between the parties to the litigation and cannot be allowed to be reagitated in the suit or in this appeal.

13. Both parties during the course of argument have referred to various documents in support of their respective pleas.

The learned Advocate-General appearing for the Appellant strenuously urged that the Plaintiffs have failed to prove their title to the suit properties for which they are not entitled to the reliefs claimed in the suit. Mrs. Padhi appearing for the Respondents while contending that the question of title having been finalised in the land acquisition proceedings which operate as res judicata in the suit also contended on reference to the documents on record that Bolangir. Trading Company Limited had full title to the properties in question. We think it unnecessary to go behind the findings of the learned Subordinate Judge to find out if the Bolangir Trading Company Limited had acquired title to the property in

question, as in our view, the said issue would be hit by the principles of res judicata even though the said findings were wrong. It is well established in law that an erroneous decision will be as much res judicata as a correct decision.

14. Before passing on to the next question as to whether the present Plaintiffs are entitled to maintain the suit we would like to keep on record that in the land acquisition proceeding it was contended by the learned Government Advocate appearing there that according to the agreement which was marked as Ext. 16 in that case the firm M/s. Surajmal Nagannal had acquired monopoly rights of business for five years and it was to be renewed thereafter for one year and as the licence expired in the year 1946, in the absence of any further agreement between the State and the firm M/s. Surajmal Nagarmal or Bolangir Trading Company Limited, the Petitioner in that case (Kanehyalal Jhunhunwala) had not acquired any right in the lands in question. The learned Subordinate Judge on a consideration of the said contentions observed that the agreement does not breathe a single word regarding the resumption of the land and the mill by the State after expiry of the monopoly business. So although the monopoly business expired in 1946 yet the Bolangir Trading Company Limited who stepped into the shoes of the firm M/s. Surajmal Nagarmal had full interest in the rice mill and the lands acquired for installation of the mill and the State has nothing to do with it. Thus the aforesaid argument does not hold good. In other words, the title of the firm M/s. Bolangir Trading Company Limited with respect to the mill, its machineries, lands, out-houses and all that comprise the landed property belonging to the Company, was found in favour of the said Company. It was further found that the said Bolangir Trading Company Limited was indebted to the present Plaintiff No. 1 (Respondent No. 1) and by virtue of the agreement dated 8-6-58, it gave delivery of possession of the mill, machineries, lands etc. to the present Plaintiff No. 1 and it was further agreed that the latter would hold the properties and utilise the same till his dues were repaid in full. He was also found to be continuing in possession since 1958 (the date of the agreement) till a portion thereof was acquired by the Government for the Railway project. It is on that basis that the learned Subordinate Judge though found that the present Plaintiff No. 1 had not acquired title to the acquired land he was entitled to receive compensation by virtue of his possession in the acquired lands.

15. The learned Advocate-General in course of his argument contended that the finding in the land acquisition would operate as res judicata so far as the question of title is concerned. But the finding regarding possession of the present Plaintiff No. 1 would not operate as res judicata as the land acquisition court was not concerned with the said question. We are unable to persuade ourselves to accept the said argument, as possession itself is a valuable right even though it had not matured to title and the present Plaintiff No. 1 was awarded compensation on the basis that he had acquired possession under an agreement from the lawful owner which itself was held to be an interest in the land acquired by the State. In a decision reported in *Gadadhar Sahu. v. Karsanbasta Patel and Ors.* ILR 1963 Cutt. 482, this Court held that a person in possession of land

without title has an interest in the property which is heritable and good against all the world excepting the, true owner. This interest unless the true owner interferes is transferable. The same view was approved by their Lordships in the decision reported in Jayagopal Mundra Vs. Gulab Chand Agarwalla and Others, . The same view has also been taken in the case of Somnath Burman Vs. Dr. S.P. Raju and Another, . The Plaintiff No. 1 in this case stands on a better position inasmuch as his possession cannot be treated as that of a trespasser as he acquired possession from the lawful owner, namely, M/s. Bolangir Trading Company by virtue of an agreement referred to above.

16. The learned Advocate-General then contended that the possession of Plaintiff No. 1 may constitute an interest in the property but such possession cannot be enforced against the true owner which in this case is the State Government. His further argument is that even if it is assumed that M/s. Bolangir Trading Company Limited had acquired any interest in the property the same is not that of a full owner. But it was merely a lease-hold right, the ultimate owner of the land being the State. He therefore contends that the possession of Plaintiff No. 1 which he claims to have derived from the lessee cannot stand on a better footing so as to enforce it against the true owner namely the Government. The word "title" is a complex term which with relation to immovable properties means a bundle of rights. The lessee who possesses the land by virtue of a lease enjoys certain rights as against his lessor. It can, therefore, be said that the rights which are enjoyed by a lessee in the lease-hold properties can be enforced against him lessor, who in the ideal sense can be termed as the paramount title holder. Assuming that M/s. Bolangir Trading Company Limited had acquired lease-hold right in the properties in question it could protect its possession against the State who at best was the lessor in respect of the suit properties. The Plaintiff No. 1 who acquired possession from the lessee would be equally competent to prevent the lessor from trespassing into the property and if situation arises would recover possession from the lessor just as the lessee could do. The aforesaid analysis does not conflict with the established principle that a person in possession of the land without title has an interest in the property which is good against the entire world excepting the true owner. It may be further mentioned that assuming that the State was the paramount title holder in respect of the suit properties it was evidently not possessed of all the bundle of rights constituting title as some of the rights were being enjoyed by M/s. Bolangir Trading Company Ltd. being a lessee, who passed on the right to possess the properties to Plaintiff No. 1 under the agreement dated 8-6-58. The source of title and the bundle of facts pertaining to the land in respect of which the land acquisition proceedings were instituted, being the same with respect to the entire A.90.40 decimals of land it would follow that the Plaintiff No. 1 has the same rights and interest in the suit lands as was found in his favour in the land acquisition proceeding.

17. So far as Plaintiff No. 2 is concerned, it has been alleged in paragraph 4 of the plaint that on 22-6-54 M/s. Bolangir Trading Company Limited leased out the mills, premises, lands and its properties to Plaintiff No. 2 for an annual premium

of Rs. 3000/- for a period of 10 years with an option of renewal and delivered possession thereof to one Gangaram Saraf who was the sale owner of Ganesh Trading Company. Again under a deed of assignment dated 15-3-57 the said Gangaram Saraf is alleged to have assigned the fences of all the said lease in favour of Ganesh Trading Company by virtue of which Plaintiff No. 2 and his brother together are now the owners of the said Ganesh Trading Company exercising all rights in respect of all those properties as lessees. The said lease was renewed for a further period of 10 years on 15-6-64. It is now asserted that it has been further extended and renewed on 25-5-1984 for a further period of 10 years expiring on 22nd June, 1994, the terms and conditions as contained in the original lease remaining the same. An application has been filed in this Court to admit the document purporting to extend the period as aforesaid as additional evidence. The said document having come into existence during the pendency of the appeal it could not have been produced or admitted into evidence during the pendency of the suit. Having heard the learned Counsel for the parties on the said application we allow the same and mark the same as Ext. 46, in this suit. The Defendant-Appellant in its written statement in reply to the assertions made in paragraph 4 of the plaint merely stated that the same were traversed in the previous land acquisition proceeding. In the circumstances we do not find any justification to hold that the Plaintiff No. 2 had no interest in the suit properties. Our conclusion therefore would be that the Plaintiffs were entitled to recover possession from the State as they were deprived of the possession by the Defendant.

18. There is one more circumstance which clinches the issue that the Defendant-Appellant did not hold all the interest in the land out of which the suit land is apart just as the land acquisition proceeding was one. Had the State been possessed of all the interests in the land constituting full title over the same there would "have been no necessity for acquisition of land as was done for the Railway project. If the State is the owner of the land which means that it holds all the different interests constituting title there would be no occasion for its acquisition under the provisions of the Land Acquisition Act, 1894. If any body had been in possession of the land which possession was merely that of a trespasser it would be a question of evicting the trespasser from the encroached land by the State as the real owner which is entitled to possess the lands by virtue of its title and it would certainly not be a case where proceeding for acquisition under the Land Acquisition Act would lie.

19. It is not the case of the Defendant - Appellant that the State took over possession of the suit properties dispossessing the Plaintiffs in due course of law. Construction of Rural Industrial Estate thereon was therefore unauthorised for which the Plaintiffs were entitled to recover possession thereof. It was, however conceded in the trial court by the counsel appearing for the Plaintiffs that since substantial structures have been raised by over the suit lands it will serve no useful purpose to demolish the same and the Plaintiffs will be satisfied if compensation is awarded for the suit lands occupied by the Defendant. The

learned Subordinate Judge fixed compensation of the suit lands measuring A.15.86 decimals at Rs. 91,195/- and awarded a further sum of Rs. 15,000/- representing the damages for three years immediately preceding the date of the suit for use and occupation of the said premises. The rate at which compensation has been fixed is not challenged in his appeal but it has been contended on behalf of the Appellant that having awarded compensation for the land in suit there was no further justification for the learned Subordinate Judge to award damages in addition to the compensation. Since the Plaintiffs are being compensated for the lands, we find no justification to award damages over and above the compensation awarded for the lands in question. We, therefore accept the argument of the learned Advocate-General that the award of damages of Rs. 15,000/- was Improper.

20. In the result, we allow the appeal in part. The suit shall stand decreed at Rs. 91,195/-, with pendente lite and future interest at 6 per cent per annum. The award of damages of Rs. 15,000/- as decreed by the learned Subordinate Judge is hereby set aside. In the peculiar facts and circumstances of this case, we make no order as to costs of this appeal.

B.K. Behera, J.

21. I agree.