

(2025) 01 OHC CK 1695

In the Orissa High Court

Case No : Second Appeal No.315 Of 1989

State Of Orissa Represented By The District Collector,
Sambalpur

APPELLANT

Vs

Prafulla Kumar Pradhan(Dead) And Others Vs

RESPONDENT

Date of Decision : 31-01-2025

Acts Referred:

Code of Civil Procedure, 1908 — Section 100

Citation : (2025) 01 OHC CK 1695

Hon'ble Judges : A.C. Behera, J

Bench : Single Bench

Advocate : G. Mohanty

Final Decision : Allowed

Judgement

A.C. Behera, J

1. This 2nd appeal has been preferred against the reversing judgment.
2. The appellant-State in this 2nd appeal was the defendant before the trial court in the suit vide T.S. No.32 of 1985 and respondent before the 1st appellate court in the 1st appeal vide T.A. No.06 of 1987.
3. The respondent in this 2nd appeal was the plaintiff before the trial court in the suit vide T.S. No.32 of 1985 and appellant before the 1st appellate court in the 1st appeal vide T.A. No.06 of 1987.

The suit of the plaintiff(respondent in this 2nd appeal) vide T.S. No.32 of 1985 before the trial court against the defendant(appellant in this 2nd appeal) was a suit for declaration.

4. As per plaintiff's case, the suit properties are under Khata No.184 in Plot Nos.911, 941, 1046, 1360 and 1361 in Mouza-Bamparda, corresponds to part of Sabik Plot Nos.643, 675, 786, 917 and 1643 under Sabik Khata No.65. The properties Ac.10.23 decimals under Sabik Khata No.65 were recorded in the

name of one Nishakara Pradhan. The said Nishakara Pradhan sold that, Ac.10.23 decimals under Sabik Khata No.65 to the plaintiff executing and registering a sale deed dated 02.11.1955. After purchasing that Ac.10.23 decimals from Nishakara Pradhan, plaintiff applied for mutation of the said properties to his name, but, the prayer of the plaintiff for mutation was refused by the revenue authorities on the ground that, the said properties are the properties of the State. For which, the plaintiff approached the civil court by filing the suit vide T.S. No.19 of 1962 against the State in the court of learned Munsif, Deogarh praying for declaration of his right, title and interest over that Ac.10.23 decimals properties under Sabik Khata No.65 and also prayed for recovery of possession along with mesne profits.

That suit of the plaintiff vide T.S. No.19 of 1962 was dismissed by the learned Munsif, Deogarh.

Then, he (plaintiff) challenged the said dismissal of his suit preferring 1st appeal vide F.A. No.46/110 of 1963 in the court of learned District Judge, Sambalpur.

The said 1st appeal vide F.A. No.46/110 of 1963 filed by the plaintiff was allowed and the judgment and decree of the trial court passed in T.S. No.19 of 1962 was set aside and the suit of the plaintiff vide T.S. No.19 of 1962 was decreed.

Thereafter, the defendant/State challenged the same by preferring 2nd appeal vide S.A. No.160 of 1964, but, that 2nd appeal vide S.A. No.160 of 1964 of the State was dismissed by the Division Bench of the Hon'ble Courts on dated 10.03.1967 confirming the judgment and decree passed by the 1st appellate court in F.A. 46/110 of 1963.

Then, as per Execution Case No.04 of 1983, the plaintiff got recovery of possession of the suit properties, i.e., Ac.10.23 decimals under Sabik Khata No.65 and possessed the same paying rent to the Government.

Subsequent thereto, the plaintiff sold Ac.3.81 decimals, out of Ac.10.23 decimals from the same to a person/vendee. Accordingly, in the Major Settlement, the said sold Ac.3.81 decimals was recorded in the name of his purchaser/vendee/transferee and only Ac.0.10 decimals was recorded in the name of plaintiff under Hal Khata No.98, but, the rest properties, i.e., Ac.6.69 decimals, out of Ac.10.23 decimals were recorded in the name of the State of Orissa erroneously in the Hal Major Settlement under Abadajogya Anabadi Khata vide Hal Khata No.184.

The said Ac.6.69 decimals under Hal Khata No.184 are the disputed properties in the present suit.

When, in the Hal Major Settlement, the settlement authorities did not record the suit properties in the name of the plaintiff in spite of getting recovery of possession of the said properties through Execution Case No.04 of 1983 on the basis of the judgment and decree passed in the 2nd appeal vide S.A. No.160 of 1964 and recorded the same illegally in the name of the State under Abadajogya Anabadi Khata No.184, then, he (plaintiff) decided for filing a suit for declaration

of his right, title and interest over the suit properties against the State.

So, he (plaintiff) issued statutory notice under Section 80 of the C.P.C., 1908 to the State(defendant) requesting the State for correction of wrong recordings of the name of State in respect of the suit properties to his name, but, the defendant(State) did not pay any heed to the request of the plaintiff. For which, after expiry of the statutory period of service of notice under Section 80 of the C.P.C., 1908, he(plaintiff) approached the civil court by filing the suit vide T.S. No.32 of 1985 against the State praying for a declaration that, the record of right in respect of the suit properties under Hal Khata No.184 in the name of State(defendant) is erroneous and to declare that, he(plaintiff) is the owner of the suit properties.

5. Having been noticed from the trial court in the suit vide T.S. No.32 of 1985, the defendant(State) contested the same by filing its written statement denying the averments made by the plaintiff in his plaint taking its specific stands therein that, the properties under Sabik Khata No.65 Ac.10.23 decimals were the Gounti-rayait properties. Nishakara Pradhan was the Gountia in respect of the said properties. For which, that Nishakara Pradhan had no right, title and interest in the properties covered under Sabik Khata No.65, because, the same were not the private properties of Nishakara Pradhan. For which, alienation made by the Gountia Nishakara Pradhan on dated 02.11.1955 in favour of the plaintiff in respect of the properties, i.e., Ac.10.23 decimals covered under Sabik Khata No.65 is ab-nitio void. Because, Nishakara Pradhan had no alienable right in the suit properties to transfer the same in favour of the plaintiff.

The further plea of the defendant(State) was that, the decision made in the 2nd appeal vide S.A. No.160 of 1964 in favour of the plaintiff by the Hon'ble Courts in respect of the properties covered under Sabik Khata No.65 has already been ruled by the Full Bench decision of the Hon'ble Court's passed in S.A. No.192 of 1977 reported in 82(1983) CLT 137. Due to over-ruling of the decision of the Hon'ble Court's passed in S.A. No.160 of 1964 through the above Full Bench decision of the Hon'ble Court's passed in S.A. No.192 of 1977, the plaintiff has been treated as a trespasser of the suit properties having his no right, title and interest on the same. For which, non-recording of the suit properties in the Hal RoR in the name of the plaintiff is neither improper nor illegal. Because, after coming into force of The Orissa Merged Territories (Village Office Abolition) Act, 1962 (Orissa Act 10 of 1963), the suit properties under Sabik Khata No.65 were vested in the State of Orissa as per law being free from encumbrances. For which, the judgment of the Court cannot over-ride the legislation, i.e., The Orissa Merged Territories (Village Office Abolition) Act, 1962. Therefore, the State of Orissa(defendant) is empowered under law to maintain RoR of the suit properties in its name, as the same are Government properties. As such, the Hal Settlement Authorities have rightly omitted the name of the plaintiff from recording the same in the name of plaintiff. Therefore, the suit of the plaintiff is not maintainable under law being hit and bar as per the provisions of law envisaged

in The Orissa Merged Territories (Village Office Abolition) Act, 1962(Orissa Act 10 of 1963). For which, the suit of the plaintiff vide T.S. No.32 of 1985 is not entertainable under law in the civil court. Therefore, the suit of the plaintiff is liable to be dismissed against the State(defendant) with costs.

6. Basing upon the aforesaid pleadings and matters in controversies between the parties altogether seven numbers of issues were framed by the trial court in the suit vide T.S. No.32 of 1985 and the said issues are:-

ISSUES

- i. Whether the suit is maintainable?
- ii. Whether the plaintiff is the occupancy tenant in respect of the said land?
- iii. Whether the decree passed in T.S. No.19 of 1962 of the court of Munsif, Deogarh and 2nd appeal No.160 of 1964 are binding upon the defendant?
- iv. Whether the entries in the RoR in recording the suit land in the name of the defendant in Major Settlement is illegal and erroneous?
- v. Whether the suit is under-valued?
- vi. Whether the suit is bad for non-joinder of necessary parties?
- vii. To what relief, the plaintiff is entitled to?

7. In order to substantiate the aforesaid relief sought for by the plaintiff against the defendant(State), the plaintiff examined himself as P.W.1 and relied upon the documents vide Exts.1 to 11.

On the contrary, in order to nullify/defeat the suit of the plaintiff, the defendant(State) neither examined any witness nor proved any document on its behalf.

8. After conclusion of hearing and on perusal of the materials, documents and evidence available in the record, the trial court answered all the issues against the plaintiff and in favour of the defendant(State).

Basing upon the findings and observations made by the trial court in the issues against the plaintiff and in favour of the defendant(State), the trial court dismissed the suit of the plaintiff vide T.S. No.32 of 1985 on contest against the defendant(State) as per its judgment and decree dated 31.03.1987 and 12.08.1987 respectively assigning the reasons that, in view of the Full Bench decision passed in the 2nd appeal vide S.A. No.192 of 1977 by the Hon'ble Court's, the findings and observations made in the 2nd appeal vide S.A. No.160 of 1964 arising out of the suit vide T.S. No.19 of 1962 have been over-ruled and, it has been held by the Full Bench of the Hon'ble Courts that, the suit properties are covered by The Orissa Merged Territories (Village Office Abolition) Act, 1962 (Orissa Act 10 of 1963) and as per the said Act, the suit properties were vested in the State and became the Government properties. Because, the suit properties

were Gounti-raiyati Land(properties). Due to lack of settlement of the same as per Sections 5, 6 and 7 of the above Orissa Act 10 of 1963 and since vesting, the said properties are the properties of the State(defendant). Except the statutory authorities under The Orissa Merged Territories(Village Office Abolition), Act, 1962 (Orissa Act 10 of 1963), no other authorities or Courts including civil court has any jurisdiction to deal with the said properties.

10. On being dissatisfied with the aforesaid judgment and decree of the dismissal of the suit of the plaintiff vide T.S. No.32 of 1985 passed by the trial court as per its judgment and decree dated 31.03.1987 and 12.08.1987 respectively, the plaintiff challenged the same by preferring the 1st appeal vide T.A. No.06 of 1987 being the appellant against the defendant(State) arraying the defendant/State as respondent after taking several grounds in his appeal memo.

11. After hearing from both the sides, the learned 1st appellate court allowed that 1st appeal vide T.A. No.06 of 1987 filed by the plaintiff on contest and set aside the judgment and decree of the dismissal of the suit of the plaintiff vide T.S. No.32 of 1985 passed by the trial court as per its judgment and decree in T.A. No.06 of 1987 dated 10.05.1987 and 19.06.1989 respectively and decreed the suit of the plaintiff vide T.S. No.32 of 1985 against the defendant(State) assigning the reasons that, despite over-ruling of the decision passed in S.A. No.160 of 1964 arising out of T.S. No.19 of 1962 by the Full Bench of the Hon'ble Court's in S.A. No.192 of 1977, the said Full Bench judgment cannot affect the right, title and interest of the plaintiff over the suit properties, which was finally decided by the Hon'ble Courts earlier in S.A. No.160 of 1964 by the Division Bench in favour of the plaintiff. Because, the said Full Bench decision of the Hon'ble Court's passed in S.A. No.192 of 1977 cannot un-settle the findings made earlier by the Hon'ble Courts in its Division Bench in S.A. No.160 of 1964 relating to the right, title and interest of the plaintiff over the suit properties. For which, the decision passed by the Division Bench in S.A. No.160 of 1964 is binding on the parties and the same operates as res judicata for the State/defendant to claim the suit properties as the properties of the State/defendant. So, the State(defendant) is bound by the earlier Division Bench decision passed in S.A. No.160 of 1964 against the defendant(State) and in favour of the plaintiff in respect of the suit properties.

12. On being aggrieved with the aforesaid judgment and decree dated 10.05.1987 and 19.06.1989 respectively passed by the 1st appellate court in T.A. No.06 of 1987 against the defendant(State) in setting aside the judgment and decree of the dismissal of the suit of the plaintiff vide T.S. No.32 of 1985 passed by the trial court, the defendant(State) challenged the same by preferring this 2nd appeal being the appellant against the plaintiff arraying him (plaintiff) as respondent.

13. This 2nd appeal was admitted on formulation of the following substantial questions of law, i.e.:-

I. Whether the decree of a civil court, incompetent to draw up a decree for the particular purpose is binding on the parties?

II. Whether on the face of the findings that question of jurisdiction of civil court was not considered by the court, which passed the decree, but, really the said civil court was incompetent to pass the said decree (as per observations of the subsequent Full Bench), the said decree can stand as a binding on the parties?

III. Whether a decree, over-ruled in another case, be held binding on parties in a subsequent suit?

14. I have already heard, only from the learned Standing Counsel for the State(appellant), as none appeared from the side of the respondent(plaintiff) for participating in the hearing of this 2nd appeal.

15. In order to assail the judgment and decree passed by the 1st appellate court, the learned Standing Counsel for the State(appellant) relied upon the following decisions:-

(i) In a case between Paramananda Pradhan and others vrs. Palau Sahu and others (decided on 16.11.1983 in S.A. No.192 of 1977) reported in 56(1983) CLT-482(F.B.)

(ii) In a case between Mangulu Jal and others vrs. Bhagaban Rai and others (decided on 15.04.1975 in S.A. No.340 of 1970) reported in AIR 1975 Orissa 219.

(iii) In a case between Dhanu Malik through L.Rs. Savitri Bewa and others vrs. Lal Sitanshu Sekhar Singh Deo and others (decided on 14.10.1971 in F.A. No.124 of 1965) reported in 37(1971) CLT-1152.

16. When, as per the pleadings of the parties, findings and observations made by the trial court and 1st appellate court, the above three formulated substantial questions of law are inter-linked having ample nexus with each other, then, all the three formulated substantial questions of law are taken up together analogously for their discussions hereunder:-

It is the undisputed case of the parties, as per their pleadings as well as the findings and observations made by the trial court and the 1st appellate court that,

"the suit land were under Sabik Khata No.65 and the said suit land were the Gounti-raiyati Land during Sabik Settlement of the year 1925-26 and Nishakara Pradhan was the Gountia in respect of the said suit land. Nishakara Pradhan sold the said land covered under Sabik Khata No.65 Ac.10.23 decimals on dated 02.11.1955 to the plaintiff and on the strength of such purchase(sale deed), he (plaintiff) has claimed his right, title and interest over the suit land by filing a suit vide T.S. No.19 of 1962. The right, title and interest of the plaintiff over the suit land was declared as per judgment and decree passed in F.A. No.46/110 of 1963 arising out of T.S. No.19 of 1962 by the 1st appellate court and the said judgment and decree passed by the 1st appellate court in F.A. No.46/110 of 1963 in favour of the plaintiff was confirmed by the Hon'ble Court's in a Division

Bench decision passed in S.A. No.160 of 1964 with the observations therein that, "the Gounti-raiyati Land are in no way different from the other ordinary Rayati land and the said land shall continue to remain as the land of the Gountia, even after abolition of his office of Gountia. For which, alienation made by the Gountia-Nishakara Pradhan to the plaintiff through sale deed dated 02.11.1955 was valid and through such sale deed, the right, title and interest of the plaintiff over the sold land under Sabik Khata No.65 has been created.

In Para Nos.15 and 16 of S.A. No.192 of 1977 passed by the Full Bench of this Hon'ble Court's in a case between Paramananda Pradhan and others vrs. Palau Sahu and others (decided on dated 16.11.1983) reported in 56(1983) CLT-482(F.B.), the above principles of law enunciated in the Division Bench in S.A. No.160 of 1964, i.e., "Gounti-raiyati Land are in no way different from other ordinary rayati land and the said land shall continue to remain as the land of the Gountia even after abolition of the office of Gountia were taken into consideration and after considering the same, it was held by the Full Bench of this Hon'ble Courts that, Gounti-raiyati Lands in Ex-State of Bamparda were not the personal land of Gountia, but, he(Gountia) was in-charge of those land by virtue or as incidental to his office and according to the provisions of Section 3(g) of The Orissa Merged Territories (Village Office Abolition) Act, 1962(Orissa Act 10 of 1963), he(Gountia) ceases to have right to hold those land and as such, the Gountia ceases to have right to hold Gounti-raiyati Land. Because, the said land were vested in the State, for which, the principles as well as findings made in S.A. No.160 of 1964 by the Division Bench of this Hon'ble Courts, i.e., Gounti-raiyati Land are in no way different from other ordinary Royati land and the same continue to remain as land of Gountia even after abolition of the office of Gountia were over-ruled. Because, in that Division Bench decision passed in S.A. No.160 of 1964, the provisions of The Orissa Merged Territories (Village Office Abolition) Act, 1962 (Orissa Act 10 of 1963) were not brought to the notice of the Division Bench of the Hon'ble Court's by the parties, for which, the above principles enunciated in S.A. No.160 of 1964 are contrary to the law."

17. When, as per the decisions of the Full Bench of this Hon'ble Courts passed in S.A. No.192 of 1977, the principles as well as the findings made by the Division Bench in S.A. No.160 of 1964 that, Gounti-raiyati land are in no way different from ordinary rayati land and the said land shall continue to remain as the land of Gountia even after abolition of the office of Gountia have been over-ruled by the Full Bench of this Hon'ble Court in S.A. No.192 of 1977 clarifying that, the above findings and observations made by the Division Bench in S.A. No.160 of 1964 are contrary to law and held by the Full Bench that, "Gounti-raiyati land in ex-State of Bamparda were not the personal land of Gountia, but, he(Gountia) was in-charge of said land by virtue of as incidental to his office and as per Section 3(g) of The Orissa Merged Territories (Village Office Abolition) Act, 1962 (Orissa Act 10 of 1963), the said land vested in the State", then at this juncture, the findings in S.A. No.160 of 1964 by the Division Bench of this Hon'ble Court's confirming the judgment and decree passed in F.A. No.46/110 of

1963 have automatically been over-ruled (turned down) and accordingly, the judgments and decrees passed in the said 2nd appeal vide S.A. No.160 of 1964 arising out of F.A. No.46/110 of 1963 have become un-useful in view of the above Full Bench decision of this Hon'ble Court's passed in S.A. No.192 of 1977.

18. When, the judgments and decrees passed in the earlier 2nd appeal vide S.A. No.160 of 1964 arising out of the judgment and decree of F.A.No.46/110 of 1963 have become un-useful, then, at this juncture, it can be held as per the Full Bench decision of this Hon'ble Court's passed in S.A. No.192 of 1977 that, the suit land under Sabik Khata No.65 being Gounti-raiyati land have been vested in the State as per The Orissa Merged Territories (Village Office Abolition) Act, 1962 (Orissa Act 10 of 1963) and as such, the suit land are Government land.

19. The conclusions drawn above finds support from the ratio of the following decisions:-

(i) Dhanu Malik through L.Rs. Savitri Bewa and others vrs. Lal Sitanshu Sekhar Singh Deo and others (decided on 14.10.1971) reported in 37(1971) CLT-1152 The Orissa Merged Territories (Village Office Abolition) Act, 1962 (Sections 3, 5, 6 and 7). The Gounti-raiyati Lands were towards emolument to the office of the Gountia, but, as per Section 3 of the Act, 1963, the properties those were Gounti-raiyati Lands, were vested in the State of Orissa free from all encumbrances. Sections 5, 6 and 7 for settlement of the properties comes into operation after vesting for settlement of the vested land. Power to settle is vested exclusively in certain revenue authorities. Appeal and revision forums are provided under Section 13 of the said Act and orders passed under Section 13 are treated as final. So, the parties are at liberty to pursue their remedies available to them under the said Act, i.e., The Orissa Merged Territories (Village Office Abolition) Act, 1962 before appropriate authorities those are empowered under the Act, but, not before the civil court.

(ii) 2019(I) CLR-651 : Sidheswar Panigrahi vrs. State of Orissa and others—The Orissa Offices Village Police Abolition Act, 1964—After abolition of village offices, the Gountia shall cease to have the right to hold the Gounti-raiyati Lands as provided under Section 3(g) of the Act. Gounti-raiyati Lands in ex-State of Bamra were not personal property of Gountia.

(iii) 2018(II) CLR-542 : State of Orissa vrs. Prafulla Kumar Peradhan(dead) through L.Rs.—Orissa Merged Territories (Village Officer Abolition) Act, 1963 (Orissa Act 10 of 1963)—Section 3(g)—After abolition of village office, the Gountia ceased to hold the Gounti-raiyati Lands, the Gounti Rayati Lands in the ex-State of Barma were not the personal properties of Gauntia, Civil Court has no jurisdiction to entertain a suit for partition of Gounti-raiyati Lands.

As per the discussions and observations made above, when, Nishakara Pradhan was the Gountia of the suit land, but, he (Nishakara Pradhan) had no title in the suit land, then at this juncture, it can safely be concluded that, the plaintiff as a purchaser of the suit land through sale deed dated 02.11.1955 cannot get any

better right or title in the suit land than his vendor Nishakara Pradhan. For which, no interest was created in respect of the suit land in favour of the plaintiff, through sale deed dated 02.11.1955 executed by Nishakara Pradhan. Therefore, the recording of the suit land in the Hal RoR in the name of its owner, i.e., State of Orissa(defendant) cannot be held as erroneous.

For which, findings and observations made by the 1st appellate court in T.A. No.06 of 1987 in setting aside the judgment and decree of the dismissal of the suit of the plaintiff vide T.S. No.32 of 1985 cannot be sustainable under law.

20. So, there is justification under law making interference with the judgment and decree passed by the 1st appellate court in T.A. No.06 of 1987 through this 2nd appeal filed by the defendant(State).

As such, there is merit in the appeal of the appellant/defendant(State). The same must succeed.

21. In result, the 2nd appeal filed by the appellant(State) is allowed on merit, but without cost.

22. The judgment and decree dated 10.05.1987 and 19.08.1989 respectively passed by the learned 1st appellate court in T.A. No.06 of 1987 is set aside.

The judgment and decree, i.e., the dismissal of suit of the plaintiff (respondent in this 2nd appeal) vide T.S. No.32 of 1985 passed by the learned trial court is confirmed.

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