

**(1988) 03 OHC CK 0005**

**In the Orissa High Court**

**Case No :** First Appeal No. 116 of 1973 and Civil Revision No. 169 of 1980

Sundarmani Bewa and Another etc.

APPELLANT

Vs

Dasarath Parida (deceased by L.R.) and Others etc.

RESPONDENT

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**Date of Decision :** 02-03-1988

**Acts Referred:**

Civil Procedure Code, 1908 (CPC) — Section 9

Orissa Consolidation of Holdings and Prevention of Fragmentation of Land Act, 1972 —  
Section 2, 4(4), 51, 7(3)

**Citation :** AIR 1988 Ori 166 : (1988) 65 CLT 440

**Hon'ble Judges :** R.C. Patnaik, J;L. Rath, J;D.P. Mohapatra, J

**Bench :** Full Bench

**Advocate :** R.K. Mohapatra and M.M. Sahu, in C.R. No. 169 of 1980, for the Appellant; A.G., S.S. Basu, D.K. Mohapatra and R.K. Mohanty for R. Ch. Mohanty, for the Respondent

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## **Judgement**

D.P. Mohapatra, J.—These two cases have come up before this Full Bench on reference by the respective Division Benches, to decide certain important questions of law relating to the Orissa Consolidation of Holdings and Prevention of Fragmentation of Land Act, 1972 (hereinafter referred to as the "Act"). On a reading of the reference orders in the two cases, the points arising for decision may be formulated as follows :

(a) Whether the consolidation authorities are competent to exercise their jurisdiction in respect of lands, which are not consolidate under the Act.

(b) Whether jurisdiction of the Civil Court is ousted in respect of non-consolidable lands during continuance of the consolidation operations in the area.

(c) Whether the authorities under Act have power to record forcible possession of a person in the land records while showing another person as the holder of title to the land.

The aforementioned points often arise in proceedings before civil courts when

attempt is made by defendants to persuade the court to pass order of abatement of suits u/s 4(4) of the Act. The controversy has engaged the attention of this Court on several occasions earlier. In the case of Abhimanyu Panda v. Digambar Beura 42 (1976) CLT 400 and in the case of Musa Jena and Others Vs. Panu Charan Naik and Others, two learned Judges of this Court had taken the" view that a suit filed in the civil court in respect of lands which are non-consolidable under the Act will not abate u/s 4(4) of the Act and the civil court has jurisdiction to decide the suit despite continuance of consolidation operations in the area. This view did not find favour with the Division Bench of this Court in the case of Jadumani Biswal Vs. Narayan Chandra Biswal (deceased by L.R.) and Others, . The Bench took the view that for the purpose of preparation of Land Records the authorities under the Act are to take into account all lands including non-consolidable lands and, therefore, a suit in respect of non-consolidable land will also abate u/s 4(4) of the Act.

2. In Civil Revision No. 169 of 1980, the trial court relying on the aforesaid decision of the Division Bench passed the order u/s 4(4) of the Act holding that the suit abated. The plaintiff filed the revision petition contending that the disputed property being Bagayat land which was not consolidate under the Act his suit for declaration of title and recovery of possession of the same was maintainable in the civil court and should have been adjudicated upon and decided without being affected by the provisions u/s 4(4) of the Act. The revision petitioner also raised the further question that the authorities under the Act have no power to record forcible possession of the land being with the defendants in the remarks column of the Land Registers. My learned brother R.C. Patnaik, J. before whom the revision petition came up initially considering the importance of the question whether a suit for any relief which the authorities under the Act have no jurisdiction to grant can be held to have abated simply because consolidation operation is going on in the area, directed the case to be placed before a Division Bench for hearing. Thereafter the case came up before the Division Bench of Justice P. C. Misra and Justice G. B. Patnaik who in their judgment dated 13-11-84 entertained doubt about the correctness of the decision in Jadumani Biswal Vs. Narayan Chandra Biswal (deceased by L.R.) and Others, and directed the matter to be placed before a larger Bench for decision. That is how the case has come before this Bench.

3. In the other case, First Appeal No. 116 of 1973. arising from a suit for partition, an order was passed on 29-7-81 that the suit shall abate in regard to the remaining properties (other than "Ka" schedule properties) excepting plot No. III in Khata No. 181/550 covered by "Ga" schedule with an area of 6.41 decimals and plot No. 272 in khata No. 59 covered by "Gha" schedule with an area of 11 decimals. When the appeal came up for hearing before the Division Bench of Justice P. C. Misra and Justice G. B. Patnaik on 11-12-84 some dispute was raised whether the plots in respect of which the appeal was held to be continuing were homestead or agricultural land. It was contended by the counsel for defendants respondents that such dispute need not be resolved inasmuch as,

according to the Bench decision of this Court reported in *Jadumani Biswal Vs. Narayan Chandra Biswal (deceased by L.R.) and Others*, the suit is to abate irrespective of the nature of the land. Since the Bench had referred Civil Revision No. 169 of 1980 to a larger Bench for examining the correctness of the aforementioned Division Bench decision, the appeal was also referred to a larger Bench for decision.

4. As indicated earlier, the questions arising for decision in these cases are important. They very often arise in suits pending before civil courts throughout the State and have far reaching consequences regarding decision of disputes relating to right, title and interest in different types of lands and reliefs to be granted to the parties relating to such properties.

The importance of the matter necessitates close and careful scrutiny of the Scheme of the Act, its intent and purpose and interpretation of the relevant provisions therein. The preamble of the Act reads :

"An Act to provide for consolidation of holdings and prevention of fragmentation of land for development of agriculture in the State of Orissa."

The Statement of Objects and Reasons runs thus :

"In the context of strategy for increasing agricultural production in the country and in pursuance thereof to give inducement and incentive to the cultivators, it is considered expedient to initiate a legislation for consolidation of scattered holdings and rearrange the holdings including fragmented holding among various land-owners to make them more compact and to provide against future fragmentation of holdings. This will help in " farming and application of improved implements and methods of farming which are very necessary for development of agriculture and increased agricultural production."

The Act contains sixty sections in all, divided into six Chapters, Chapter I deals with preliminary provisions including definition of different terms in Section 2, Chapter II deals with preparation of map and Land Register; Chapter III with preparation of consolidation scheme; Chapter IV with enforcement of the scheme; Chapter V with prevention of fragmentation and Chapter VI contains miscellaneous provisions including revision (Section 36), power of Civil Court to be exercised by authorities under the Act (Section 44), jurisdiction of courts (Section 47) and bar of jurisdiction of civil courts (Section 51). The definition of some terms relevant for the present purpose may be noticed at the outset. Section 2(a) defines "agriculture" as :

" "agriculture" includes the raising of crops, grass or garden produce, horticulture, dairy farming, breeding and keeping of live-stock, pisciculture, poultry farming and use of land as pasture or for forest or for any purpose where such use is ancillary to agriculture."

Under Clause (b) "agricultural land is defined as :

" "agricultural Sand" means land held or occupied for agriculture or for purpose connected with agriculture and includes--

(i) a house or similar structure standing over such land ancillary to agriculture; and

(ii) trees, wells, and other improvements existing on such land."

Clause (e) defines the term "chaka" as-

" "Chaka" means a compact parcel of land allotted to a land-owner on consolidation."

Clause (f) defines the term "consolidation" as-

" "consolidation" means amalgamation and redistribution of a parcel or parcels of land comprised in different holdings of a unit for the purpose of rendering such holdings more compact;

Explanation.-- For the purpose of this clause, holding shall not include the followings

(i) lands which are covered by orchards, groves or homesteads by the date of publication of a notification in the official gazette under Sub-section (1) of Section 6;

(ii) land which in the opinion of the Director of Consolidation, is subject to severe fluvial action, intensive soil erosion or prolonged water-logging or is otherwise unfit for cultivation; and

(iii) such other areas as the Director of Consolidation may declare to be unsuitable for the purpose of consolidation :

Provided that no such declaration shall be made on a claim preferred by any land-owner if such claim is preferred after the date of publication of the Provisional Consolidation Scheme relating to the area u/s 18."

Clause (g) defines the term "consolidation area" as follows :

" "consolidation area" means the area in respect of which a notification under Sub-section (1) of Section 3 has been issued"

The term "holding" has been defined in Clause (n) as follows : --

" "holding" means a parcel or parcels of land forming the subject matter of a separate tenancy."

Clause (o) defines the term "land" as follows : --

" "land" means land of whatever description,"

Under Section 3 the State Government is vested with the power to issue notification bringing any area under consolidation operations. Upon publication of

such notification the consequences to ensue are provided in Section 4. Some of the consequences enumerated in the said section are that notwithstanding anything contained in any law for the time being in force, no land owner, except with the permission in writing of the Consolidation Officer previously obtained, shall, transfer by way of sale, gift, mortgage or exchange any agricultural land, other than the categories of land mentioned in the Explanation to Clause (f) of Section 2 and no document purporting to effect any such transfer shall be registered by a registering officer appointed under the Registration Act (16 of 1908) unless the document is accompanied by a certified copy of the aforesaid written permission (see Section 4(2)), no land-owner shall, after the publication of the Map and Land Register u/s 9, convert any land in the unit to be used in any manner so as to render it unsuitable for consolidation without obtaining the permission in writing of the consolidation officer (vide Section 4(2-a)), every proceeding relating to survey, preparation and maintenance of record-of-rights and settlement of rent shall stand abated after publication of the notification under Sub-section (1) of Section 6 (Section 4(3)), and u/s 4(4) which is particularly material for the present purpose, it is provided, inter alia, that every suit and proceedings for declaration of any right or interest in any land situate within the consolidation area in regard to which proceedings could be or ought to be started under this Act, which is pending before any civil Court, whether of the first instance or appeal, reference or revision shall, on an order being passed in that behalf by the Court before which suit or proceeding is pending, stand abated Under the third proviso to Section 4(4) it is stated that such abatement shall be without prejudice to the right of the person affected to agitate the right or interest which formed the subject matter of the said suit or proceeding, before the proper consolidation authority in accordance with the provisions of the Act or the rules made, thereunder. u/s 6 of the Act, it is provided that as soon as may be after the publication of the notification under Sub-section (1) of Section 3, the Director of Consolidation shall issue a notification constituting units and initiating preparation of maps and land register in respect of each unit which shall be published at a conspicuous place of the village for a period of not less than fifteen days. Under Sub-section (2) of the said section the Asst. Consolidation Officer upon publication of the notification under Sub-section (1) is required to carry out certain functions including preparation of map of each village in the consolidation area in the prescribed manner, preparation of register known as the land Register showing particular of the lands, interests therein, rent and cess settled therefore and such other details as may be prescribed, to determine in consultation with the consolidation committee the valuation of the lands, after taking into consideration their productivity, location, availability of irrigation facilities and other relevant factors, if any, and houses, structures, trees, wells and other improvements existing on such land and to determine the shares of individual land-owners in joint holdings for the purpose of effecting partition to ensure proper consolidation. u/s 7 power is vested with the Revenue Officer, the Asst. Consolidation Officer and the Consolidation Officer to effect partition of the joint holdings on application of any party interested, notwithstanding anything to

the contrary contained in any other law for the time being in force. Section 9 of the Act provides for records, if any, prepared u/s 6 together with the Statement of Principles prepared u/s 8 and copies thereof to be forwarded to the local Tahsildar. The other provisions deal with disposal of objections relating to the Map, Land Register and records. u/s 14, with a view to attach finality to the map and records, it is provided that no question in respect of right, title and interest in land, partition of joint holdings or valuation of lands, houses, structures, trees, wells and other improvements which question might or ought to have been raised by the land owner u/s 9, but has not been so raised shall be raised or heard at any subsequent stage of the consolidation proceedings. As noticed earlier, Chapter III deals with preparation of consolidation scheme; provisional scheme, initial and final scheme after taking into consideration objections, if any. Section 22 provides for preparation and publication of final map and record-of-rights and final consolidation scheme. In Chapter IV while dealing with enforcement of the scheme, Section 25 provides that on an application made within sixty days from the date of coming into force of the final consolidation Scheme by the land-owner who is unable to enter into possession of the lands allotted to him under the said scheme, the Asstt. Consolidation Officer may, within six months from the date of the application, put the land-owner in actual physical possession of the lands so allotted and in doing so, shall have all the powers as are exercisable by a Civil Court in execution of a decree for delivery of possession of immovable property, Under Sub-section (3) of the said section, suo motu power is vested in the Asst. Consolidation Officer to put the land owner in actual physical possession of the lands allotted to him in the same manner and subject to the same conditions as specified in Sub-section (1) at any time before the issue of a notification under Sub-section (1) of Section 41 of the Act and under Sub-section (4) of the said section it is provided that the powers exercisable by the Asst. Consolidation Officer under Sub-section (3) shall, in like manner and in like circumstances be exercisable by the Tahsildar having jurisdiction after the issue of a notification under Sub-section (1) of Section 41. The other relevant provision which needs to be noticed is Section 51. The same is quoted hereunder :

"Section 51. Notwithstanding anything contained in any other law for the time being in force, but subject to the provisions contained in Clause (3) of Section 4 and Sub-section (1) of Section 7 --

(1) all questions relating to right, title, interest and liability in land lying in the consolidation area, except those coming within the jurisdiction of Revenue courts or authorities under any local law for the time being in force, shall be decided under the provisions of this Act by the appropriate authority during the consolidation operations; and

(2) no Civil Court shall entertain any suit or proceeding in respect of any matter which an officer or authority empowered under this Act is competent to decide."

5. From the provisions of the Act discussed above, it is manifest that the statute

has been enacted with the avowed purpose of consolidating agricultural land and preventing its fragmentation which would help in augmenting agricultural production. The entire Scheme of the Act is thus related to agricultural land which has been made consolidate under the Act. In order to facilitate smooth functioning of implementation of the Scheme of the Act and to avoid holding of parallel enquiries and adjudication of rights by authorities under the Act, other Revenue authorities and civil courts, provisions like Section 4(4) for abatement of pending suits and Section 4(3) for stay of settlement proceedings have been made. Taking into account the intent and purpose of these provisions as indicated above, the position is clear that they are confined to lands which form part of consolidation scheme and are to be dealt with by the authorities under the Act. Other lands which do not come within the ambit of the consolidation scheme and in respect of which the authorities have not been vested with power to deal with obviously would not be affected by the bar under the aforesaid provisions. In respect of such lands the civil courts and other competent authorities shall be fully competent to adjudicate and decide disputes as provided under law, To hold otherwise would lead to various complications, some of which are often raised in proceedings before this Court. An aggrieved party may be left with no forum to agitate and vindicate his grievances. The authorities under the Act would express their inability to help since the disputed land does not come under the consolidation scheme and they are not vested with power to grant relief in respect of it and the common law forum would be equally helpless since the suit would abate and filing of fresh suit would be barred under the provisions of the Act. Such a chaotic situation, in my view, could not have been intended by the legislature while defining "land" in Section 2(o) to mean land of whatever description. Read in isolation, the definition may indicate that land includes all types of lands, even non-consolidable lands, but read in the background of the intent and purpose of the statute, it would, in my opinion, be reasonable to read the definition of the term as meaning consolidable land of whatever description.

One provision which needs to be particularly noticed in this connection is Section 7(3-b). This is because on reading the provisions therein an impression may be created that all types of lands were intended to be included in the definition of "land" u/s 2(o) of the Act, Indeed, an argument to this effect was advanced at the Bar. It was also argued that this section is yet another instance of ambiguity in the statute.

Sub-section (3-b) of Section 7 is quoted below :

"(3-b). Where the settlement of fair and equitable rent and cess is to be made in respect of any land used for any purpose other than agriculture including all kinds of home stead lands in urban and rural areas of the State, such settlement shall be made having regard to--(a) the situation of the land;

(b) purpose for which it is used;

(c) communication and marketing facilities; and

(d) market value of the land."

On a closer look to the aforesaid provisions, in my view, the argument in support of giving a wider meaning to the term "land" on the basis of the said provisions cannot be sustained. Firstly, the provision was introduced in the statute subsequently by Act 15 of 1976 substituting Sub-section (3) of Section 7. Secondly, the limited purpose for which the provision has been enacted is settlement of fair and equitable rent and cess to be made in respect of any land used for any purpose other than agriculture including all kinds of homestead lands in rural and urban areas of the State. Keeping in view the aforesaid features, it would be fair and reasonable to read the provision to confine it to the specific purpose for which it appears to be meant, that is to settle fair and equitable rent and cess for lands used for purpose other than agriculture. It cannot be taken as a guideline to determine the meaning and import of the term "land" as defined in Section 2(e). It is not necessary for us in the present proceedings to examine whether the provisions under this section have any nexus with the purpose of the statute, that is, to provide for consolidation of holdings and prevention of fragmentation of land for development of agriculture in the State.

6. In *Jadumani Biswal Vs. Narayan Chandra Biswal (deceased by L.R.) and Others*, the Division Bench mainly, considered the question whether homestead land is covered by the provisions of the Act and whether a suit pending in the civil court in respect of such land will abate u/s 4(4) of the Act. It answered the question in the affirmative and overruled the decisions in the case of *Abhimanyu Panda (1976) 42 CLT 400* and in the case of *Musa Jena and Others Vs. Panu Charan Naik and Others*, which had taken a contrary view. As it appears from the decision of the learned Judges (each of them delivered a separate judgment) they came to hold that for the purpose of preparation of map and register, lands other than consolidate lands like homestead came within the purview of the Act and the authorities under the Act had power to deal with such lands, though for the purpose of consolidation operations the authorities had no power to deal with them. The Court referred to the provisions in Section 7 of the Act while discussing this aspect of the case. It was further held in that decision that since the language of Section 4(4) was clear and unambiguous the Preamble to the Act and the Statements of Objects and Reasons in the Bill were not available to be taken into consideration for gathering the intention of the legislature and also for interpreting the provisions of the statute. While enumerating the conditions necessary to be established for abatement of a pending civil suit u/s 4(4) of the Act, the Court observed, with respect, rightly, that one of the conditions to be satisfied is that the suit must be for declaration of any right or interest in land in regard to which proceedings could be or ought to be started under the Act and if under the provisions of the Act no proceeding can be started in respect of any land, the suit in respect thereof pending in civil court cannot abate. It was further observed in the judgment that if the suit abates, then the consolidation authorities must have jurisdiction to go into the question involved and

conversely, if a matter can be gone into by the consolidation authorities, then a suit in respect of that matter must abate u/s 4(4). The Court held that the authorities under the Act have power to partition the homestead land also u/s 7, Justice B. K. Behera in his judgment however observed that every clause of a statute is to be considered with reference to the context and other provisions of the Act to make a consistent and harmonious meaning of the statute relating to the subject matter. But he came to hold that when the Act has provided for consolidation of certain varieties of lands and has also provided for abatement of suits and proceedings in the civil courts in respect of land of whatever description, interpretation of the word "land" occurring in Section 4(4) adopted in the decision would not affect the harmonious construction or consistency of different provisions of the Act.

I have carefully gone through the aforesaid decision. With respect. I would venture to say that though many of the principles for interpretation of the provisions of the Act and construction of its scope and ambit have been correctly stated while applying the principles to the question which arose for consideration, the learned Judge committed error. Coming to the question of ambiguity in different provisions of the Act, particularly Section 4(4) ambiguity in all cases may not be patent on reading a particular provision. Ambiguity may appear when the said provision is read in conjunction with other provisions and it is found that it is impossible to work it out. The Division Bench held that the land includes homestead land and the consolidation authorities have power to effect partition of such land u/s 7 of the Act. But the purpose of partition will not be served merely by an order passed by the authorities under the Act. They must have the power of effecting actual division of the land and giving physical possession of it to the parties in accordance with their shares. Such a power, it is admitted by counsel for the parties, is vested only in Section 25 of the Act. The said section deals with delivery of possession of lands allotted to the party under the final consolidation scheme, that is, lands included in the chaka. As noticed earlier, the Division Bench held that homestead land and lands other than agricultural land are not included in the consolidation scheme. If the authorities under the Act have no power to execute the order of partition and deliver actual physical possession of the land allotted to a party in such partition, then the order passed by the authority would be ineffective and redundant and the entire exercise irrelevant. It would give no relief whatsoever to the party seeking partition. Thus the ambiguity is patent. Indeed, the learned Advocate-General appearing for the State fairly stated that there are many such situations to which no fair answer could be found on interpreting the provisions in the statute. Unfortunately, the Division Bench did not notice the provisions of Section 25 of the Act while giving its finding that the authorities under the Act have power to effect partition of homestead land. Therefore, it is not correct to say that the definition of the terms "land", "agricultural land" and "consolidation" in Section 2 and the provisions in Section 4(4) and Section 51 of the Act are clear and admit of no ambiguity. It therefore, becomes necessary to ascertain the intention of the

legislature with reference to the Preamble to the Act and its Statements of Objects and Reasons. The learned single Judges while deciding the cases of Abhimanyu Panda (1976) 42 CLT 400 and Musa Jena and Others Vs. Panu Charan Naik and Others, rightly relied upon them. Another important aspect to be considered while judging the question whether civil court has lost its jurisdiction to adjudicate a pending suit or entertain a fresh suit, is if the relief sought in the suit is available to be granted by the authorities under the Act. It may so happen that the land in question may come within the consolidation scheme and the authorities under the statute are vested with power to deal with it for the purpose, but the particular controversy raised in the suit and the relief sought therein may not be within the jurisdiction of the authorities. In such a situation, in my view, the common law forum, which has the jurisdiction to adjudicate upon all controversies relating to civil matters, cannot be held to have lost its jurisdiction. The position is well settled that while jurisdiction of common law forum is wide, that of the forums created by special statute are confined to the provisions of the statute. If the statute does not vest a power in the authorities created under it, such power is not available to be exercised by the said authorities. Therefore, before holding that the jurisdiction of the civil court to entertain a suit is ousted under the provisions of the Act, two essential ingredients are to be found, that the disputed property is included in the consolidation scheme and the relief sought in the suit can be granted by the authorities under the Act. If any of these conditions is not satisfied in a case, then the suit will not abate u/s 4(4) or Section 51 of the Act. The position has been recognised by this Court not only in the case of Jadumani Biswal Vs. Narayan Chandra Biswal (deceased by L.R.) and Others, but in other decisions too.

(i) *Rahas Bewa Vs. Kanduri Charan Sutar and Others*, ;

(ii) ILR (1981) Cut 146 (*Sankar Das v. Govinda Sahoo*).

Judged by these principles the position appears to be inescapable that a suit for partition of homestead land or other non-consolidate land filed in the civil court will not abate and the civil court shall continue to exercise the jurisdiction in such matters despite issue of a notification u/s 3(1) of the Act relating to the area.

7. The point that remains to be considered is whether the authorities under the Act have the power to record in the Land Register forcible possession of land with one person while recording title with another. There is no controversy that such power is not vested by any express provision in the Act. A contention is raised that possession is a relevant consideration for determination of the question of title to property and since the authorities under the Act are vested with the power to enquire into and determine the question of title and interest to land within the notified area, they are therefore impliedly vested with the power to enquire into the question of possession of property and if actual physical possession of the property though unauthorised is found with a person and such person has not perfected his title by adverse possession then the fact of his

possession ought to find place in the record prepared by the authority. On giving my anxious consideration to it, I am unable to accept this contention. The authorities under the Act are vested with the power to enquire into the question of title and interest to condolidable lands lying within the notified area. There is no doubt that possession is an important factor in the matter of determination of title to the land and for that purpose need to be considered. In many cases possession may form the basis of acquisition of title by a party, for example, where the party claims to have perfected his title to the property by adverse possession. But in a case the possession of the party though adverse falls short of the requisite period for acquisition of title, the enquiry relating to possession is of no avail. It will be a futile exercise. If the authority finds that the person in forcible possession of the property has perfected title to it by continuing in such possession for requisite statutory period, then he is entitled to be recorded as having title to the property and the name of the true owner is not to be recorded since he has lost his title to it. It has been brought to our notice by the learned counsel for the parties that the authorities under the Act are often making such entries in the records. Such action by the authorities presumably is under the impression that as in the case with settlement authorities forcible possession by a party who has not perfected his title to the property by adverse possession ought to be reflected in the records. The basic difference between enquiry by the settlement authority and that by the authority under the Act is that while the former is to prepare the record on the basis of actual physical possession of the property the latter is required to determine the question of interest and title to the property, Therefore, recording title to the property with one person and possession with another does not serve the intent and pu"rpose of the Act and therefore ought not to be undertaken by the authorities under the Act. Observations supporting this view have been made in a Division Bench decision of this Court in the case of Bhagirathi Kar and Another Vs. Jagannath Roul and Others, . On the analysis presented above, my answer to the point is that the authorities under the act are not vested with the power to record forcible possession with a party other than the person recorded as the owner of the land while preparing land records.

8. On the analysis and the discussions made in the foregoing paragraphs I would answer all the three questions formulated in the first paragraph in the negative. As such the Civil Revision is allowed and the order of the trial court holding that the suit abated is set aside. Both parties shall bear their respective costs of this proceeding.

In the First Appeal, no argument was advanced before us on behalf of the parties regarding merits of the appeal. As such the appeal shall be placed before the appropriate Bench for disposal.

R.C. Patnaik, J.

9. I agree.

L. Rath, J.

10. I agree.