
(2025) 11 OHC CK 1889
In the Orissa High Court
Case No : RSA No. 09 Of 2011

Tarun Kumar Rout & Ors

APPELLANT

Vs

Baishnaba Das & Anr

RESPONDENT

Date of Decision : 10-11-2025

Acts Referred:

Code Of Civil Procedure, 1908 — Section 96, 100
Orissa Survey And Settlement Act, 1958 — Section 13, 42

Citation : (2025) 11 OHC CK 1889

Hon'ble Judges : Chittaranjan Dash, J

Bench : Single Bench

Advocate : K. Rath, S. K. Nayak

Final Decision : Allowed

Judgement

Chittaranjan Dash, J

1. Heard learned counsel for both the parties.
2. This Second Appeal, instituted under Section 100 of the Code of Civil Procedure, is directed against the reversal Judgment and Decree passed by the learned District Judge, Balasore-Bhadrak in RFA No. 71 of 2003, which arose from the Judgment and Decree rendered in Title Suit No. 57 of 1991 by the learned Civil Judge (Junior Division), Balasore. For the sake of clarity and consistency, the parties shall continue to be referred to as 'Plaintiff' and 'Defendant', as they were arrayed in the original suit.
3. The factual matrix giving rise to the present appeal is that the Plaintiff, Khetra Mohan Rout (original Respondent No. 1), instituted the suit seeking a declaration of title over the 'Ga' schedule land in his favour, along with a further declaration that the preparation of the settlement khatian and map in respect thereof is illegal and erroneous. The suit land, described as 'Ga' schedule land and situated in Mauza Sovarampur, is delineated as follows:

Khata No.

Plot No.

Area

M.S.Khata No. 290

376/880

Ac.0.00500 squire links out of Ac.0.007 dec

(Part of C.S.Plot Nos. 171 and 173).

M.S.Khata No.290

374

Ac.0.01500 squire links out of Ac.0.095 dec

(Part of C.S.Plot No. 171)

M.S.Khata No.310

372

Ac.0.00500 squire links out of Ac.0.140 dec.

(Part of C.S.Plot No. 171)

In total

...

Ac.0.02,500 squire links (Ac.0.02 ½ dec.)

According to the Plaintiff, the 'Ka' schedule land appertaining to Current Settlement Khata No. 28 stood recorded in the names of Kanduru Rout and Radhu Rout, both sons of Kanhu Charan Rout, each having an equal share. The Plaintiff is the son of Radhu Rout. Kanduru Rout, the Plaintiff's uncle, died in 1942 leaving behind his wife, Ashamani, and two daughters, Rukmani and Purnima. After Kanduru's death, his widow and daughters remained under the care and protection of the Plaintiff's father. Both daughters were subsequently married and began residing in the houses of their respective in-laws. In 1954, Radhu Rout, father of the Plaintiff, passed away; his wife had predeceased him. Thereafter, the Plaintiff came to possess both the lands of his father and his uncle. On 21.02.1974, Ashamani, widow of Kanduru, executed a registered gift deed in favour of the Plaintiff. Under the said deed, the Plaintiff received eight annas share out of Ac. 0.42 dec. of Current Settlement Khata No. 28, as well as Ac. 0.02 dec. from the donor's purchased land under Current Settlement Plot No. 169, thereby receiving a total of Ac. 0.23 dec. from Khata No. 28. Apart from the said khata, the Plaintiff also received other lands not connected with the suit land.

The Plaintiff asserts that, having continued in possession of the lands gifted by

his aunt, he became a six-annas owner, and the Major Settlement record accordingly reflected his name. The cause of action arose when the Plaintiff discovered that, in the Major Settlement Khatian, the 'Ga' schedule land had been wrongly amalgamated into the khata of the original Defendant No. 1, Baishnab Das, and original Defendant No. 2, Hiramani Singh @ Das, wife of Baishnab Das. As Defendant Nos. 1 and 2 allegedly threatened to dispossess him by taking advantage of the erroneous Major Settlement record-of-rights, the Plaintiff instituted the present suit. The contesting Defendants Nos. 1 and 2 contended that the Plaintiff was recorded only in respect of the lands actually in his possession, whereas they were in possession of the suit land, and the record-of-rights correctly reflected such possession. They further stated that their homestead land, existing since the time of their forefathers, adjoins the Plaintiff's homestead, and forms a single enclosure. According to them, the Plaintiff, being unable to secure entry of certain lands in his favour during the Major Settlement operation, filed this belated suit with an intention to grab their property. They asserted that Major Settlement Khata No. 310, comprising Ac. 0.140 dec., stands recorded in the name of Hiramani Singh, daughter of Fakira Singh; Radhu Singh is arrayed as Defendant No. 3. Their principal defence is that the suit is barred by limitation and that the Plaintiff was never in possession of the suit land.

4. The learned Trial Court, having regard to the divergent pleadings of the parties, framed five issues for determination. It answered Issue Nos. 2, 3 and 4 in favour of the Plaintiff, declaring his right, title and interest over the suit land, and further holding that the Major Settlement map and record-of-rights had been erroneously prepared, and that the Defendants had no right over the said land.

The learned First Appellate Court, upon re-appreciating the evidence adduced before the Trial Court and after hearing the submissions advanced, took the view that the Plaintiff's claim, though couched as one for declaration, was in substance a claim seeking correction of the entries in the record-of-rights and the corresponding map, thereby falling squarely within the ambit of Section 42 of the Orissa Survey and Settlement Act. According to the Appellate Court, the Trial Court had been misled by the fact that in the 1927 Settlement the land stood recorded in the name of the Plaintiff's family, while ignoring the ground reality that, by 1986, much water had flowed in the river Mahanadi and the possession and physical features of the land had undergone substantial change. Taking a practical view, the settlement staff had conducted a fresh survey, prepared the record-of-rights, and issued draft copies to the parties inviting objections.

The Appellate Court further observed that a party who remains inactive during settlement operations is afforded a statutory period of three years under Section 42 of the Survey and Settlement Act to seek correction; a person who fails to avail such remedy within the prescribed period "misses the train for life." It held that correcting the record-of-rights and the map pursuant to a court decree passed in 2010 would create a "topsy-turvy" situation, which is impermissible, and that it would amount to a travesty of justice to deprive a recorded owner of

a right he had been enjoying since 1926.

In view of the legal position and the practical considerations involved, the learned First Appellate Court set aside the findings of the Trial Court as erroneous, reversed the impugned judgment, and dismissed the suit while allowing the Appeal.

5. Mr. D. P. Mohanty, learned counsel for the Appellant, contended that the substantial question of law framed by this Court – whether the suit is barred by Section 42 of the Orissa Survey and Settlement Act, has been erroneously answered by the First Appellate Court. It was submitted that the Trial Court had correctly declared the Plaintiff's right, title and interest over the suit land after appreciating the evidence adduced by both sides, and that the Plaintiff's possession from the time of his predecessors stood admitted by the Defendants themselves. According to learned counsel, the title of the parties was never in dispute at any stage of the litigation, and the suit was founded not for declaration of title but for correction of the map wherein the 'Ga' schedule land had been wrongly amalgamated during the Major Settlement operation.

Mr. Mohanty argued that the finding of the First Appellate Court that the suit should have been presented under Section 42 of the Survey and Settlement Act is misconceived, as the Plaintiff had not sought correction of the record-of-rights but only of the map, in which the error had occurred. Once the title and possession of the Plaintiff were admitted, the question of invoking Section 42 did not arise. The First Appellate Court, it was urged, misdirected itself in treating a limited prayer relating to the map as a challenge to the entire settlement record, thereby attracting the bar of limitation. It was further contended that the Appellate Court's observation that the Plaintiff approached the Civil Court after an inordinate delay is contrary to the materials available on record. The Court failed to consider the specific admissions of the Defendants acknowledging the Plaintiff's possession over the suit land, and the finding that the Plaintiff was not in possession is wholly unsupported by evidence and based merely on conjectures. Learned counsel submitted that, in view of the admitted title and possession of the Plaintiff, the present suit could not be rejected on the technical ground of alleged delay under Section 42.

6. Upon a careful consideration of the rival submissions, this Court proceeds to examine the substantial question of law. It is well settled that interference in Second Appeal is warranted only when the findings of the courts below suffer from perversity, misapplication of statutory provisions, or disregard of material evidence. It is in that perspective that the impugned Judgment of the First Appellate Court, as well as the reasoning of the Trial Court, are required to be scrutinised. In the present Second Appeal, the following substantial question of law arises for determination:

"Whether the learned First Appellate Court was justified in holding that the suit, in its present form, is barred under Section 42 of the Orissa Survey and

Settlement Act, 1958, and consequently in reversing the decree passed by the learned Trial Court?”

7. Mr. Nayak, learned counsel for the Respondents, on the other hand, placed reliance upon the decision of the Coordinate Bench in *Latika Kar & Others vs. State of Odisha & Others*, passed in RSA No. 88 of 2013. Drawing attention to the said judgment, he submitted that the Coordinate Bench had expressly considered and distinguished the very decisions relied upon by the Appellant, including *Basanti @ Basantirani Jena vs. State of Odisha*, reported in 2016 (Supp.-1) OLR 529. He contended that the Court in *Latika Kar* did not accept the ratio relied upon by the Appellant and clearly held as follows:

“This Court is, however, unable to accept the contention of learned Senior Counsel in this regard for the reason that the ratio of the cited case would apply only when the person concerned is actually the title-holder notwithstanding the wrong recording of the ROR. Here, it has been specifically contended that the plaintiffs are not claiming title over the suit property but their prayer is for correction of the record-of-rights simpliciter along with declaration of right of user.”

Relying on the above reasoning, Mr. Nayak argued that the Plaintiff’s prayer in the present case, though styled as declaratory, is in substance nothing but a request for correction of the settlement record and map, and therefore squarely attracts the bar under Section 42 of the Orissa Survey and Settlement Act. He submitted that the Plaintiff cannot circumvent the statutory limitations period by giving the relief a declaratory form, when its essence is a challenge to the entries in the settlement proceedings.

8. Upon a careful examination of the impugned judgment, it becomes evident that the principal foundation upon which the learned First Appellate Court reversed the well-reasoned findings of the Trial Court was its conclusion that the Plaintiff, though admittedly aware that the suit land had not been recorded in his favour in the last publication of the record-of-rights, failed to challenge such recording within the statutory period prescribed under Section 42 of the Orissa Survey and Settlement Act. The learned First Appellate Court held that the suit, having been instituted after a lapse of four years, nine months and eight days, stood squarely barred by limitation and therefore was not maintainable in law. For arriving at such a conclusion, the First Appellate Court placed reliance on the settled legal position governing the maintainability of civil suits in matters relating to entries in the record-of-rights, as expounded in a series of decisions including *Panu Behera vs. Jitendriya Das & Others*, reported in 54 (1982) CLT 393; *Bhagabat Jena & Others vs. Gobardhan Patnaik & Others*, reported in 54 (1982) CLT 30; and *Narasingh Garabadu vs. Kedarnath Panda*, reported in 1972 (1) CWR 615.

It further invoked the statutory presumption contained in Section 13 of the Act, to the effect that every entry in the finally published record-of-rights shall be

presumed to be correct unless proved otherwise. On this premise, the Appellate Court reasoned that, if the Plaintiff's land had indeed been amalgamated with that of the Defendants, the Plaintiff could not possibly have remained in possession of the disputed 'Ga' Schedule land; the measurements reflected in the settlement record were therefore presumed to correctly depict actual possession. The settlement authorities, who are statutorily bound to record possession unless found otherwise, would not have entered the Defendants' names had they not been in possession. It was further observed that possession allegedly exercised in 1927 could not be presumed to have automatically continued in 1986; it was incumbent upon the Plaintiff to establish such continuity by cogent evidence. The First Appellate Court also took note of the fact that the Plaintiff's remaining lands had been duly recorded in his favour and, consequently, his claim over only the suit patches was perceived as misconceived.

9. However, while scrutinising the reasoning of the learned First Appellate Court in the light of the pleadings, evidence, and the applicable law, this Court finds that the approach adopted by the First Appellate Court rests on an erroneous appreciation both of the factual substratum and the legal principles governing the field. A close reading of the decision of the Co-ordinate Bench in *Latika Kar & Others vs. State of Odisha & Others*, passed in RSA No. 88 of 2013, which has been relied upon by the Respondents reveals that the issues adjudicated therein pertained principally to the nature of lease and licence and more importantly, the title of the parties was directly in dispute. The said decision, therefore, does not render any assistance to the present controversy. Indeed, the very judgment in *Basanti @ Basantirani Jena vs. State of Odisha*, reported in 2016 (Supp-1) OLR 529, which had been cited by the Appellant and which the First Appellate Court cursorily distinguished, unequivocally holds that even when a suit is brought beyond the statutory period, the nature of the relief sought and the issues relating to title cannot be ousted solely on the ground of limitation under Section 42 of the Survey and Settlement Act if the suit is, in substance, one asserting independent civil remedies.

10. Significantly, in *Latika Kar* (supra) itself, the Co-ordinate Bench clarified that the ratio of *Basanti Jena* (supra) would apply where the person concerned is the actual title holder notwithstanding any erroneous recording in the record-of-rights. The distinguishing factor in *Latika Kar* (supra) was that the plaintiffs therein did not claim title at all; they sought merely a correction of the record-of-rights simpliciter along with a declaration of the right of user. The present case stands on an entirely different footing. Here, the Plaintiff has asserted an existing title over the suit land and challenged the alleged wrongful settlement entries only as a consequence of such assertion of title. The bar under Section 42, therefore, cannot be stretched to eclipse an adjudication on civil rights which fall squarely within the jurisdiction of the Civil Court.

11. This Court further notes that the learned First Appellate Court appears to have been swayed predominantly by the issue of limitation under Section 42, and

in doing so, failed to undertake a comprehensive evaluation of the evidence both documentary and oral laid by the parties before the Trial Court. The Trial Court had meticulously examined the materials and rendered findings on possession, title, and the alleged amalgamation of land. The First Appellate Court, instead of re-appreciating such evidence as mandated under Section 96 CPC, chose to dispose of the appeal almost exclusively on the premise that the suit was time-barred. Such an approach, overlooking the substantial factual findings recorded by the Trial Court, is contrary to established judicial principles.

As observed by the Co-ordinate Bench while setting aside a similar erroneous approach in RSA No.88 of 2013, the First Appellate Court cannot reverse the findings of the Trial Court solely on the basis that the suit was filed beyond the limitation prescribed under Section 42 without duly appreciating the evidence regarding title and possession. When the Trial Court's findings rest on a detailed appreciation of evidence and when the bar of limitation is not absolute in suits where title is directly asserted, the First Appellate Court's refusal to examine the matter on merits amounts to a misdirection in law. Therefore, the reasoning of the Appellate Court, being inconsistent with the factual matrix and the governing legal principles, cannot be sustained.

12. In view of the above discussion, this Court is of the considered opinion that the learned First Appellate Court committed an error in treating the suit as one barred under Section 42 of the Orissa Survey and Settlement Act, without duly appreciating the nature of the reliefs sought, or the evidence adduced before the Trial Court. The reversal of the well-reasoned findings of the learned Civil Judge (Junior Division), Balasore, in Title Suit No. 57 of 1991, solely on the premise of limitation and statutory bar, is unsustainable both on facts and in law.

13. As a result, this Second Appeal challenging the Judgment and Decree passed by the learned District Judge, Balasore-Bhadrak in RFA No. 71 of 2003, merits interference. The impugned Judgment and Decree are hereby set aside, and the Judgment and Decree of the learned Trial Court is hence restored.

14. Accordingly, the RSA is allowed.