



IN THE HIGH COURT OF ORISSA AT CUTTACK

SA No.46 of 2000

[In the matter of an appeal under Section 100 of CPC from Judgment dated 28.10.1999 followed by decree dated 02.11.1999 passed by the learned Addl. District Judge, Bhadrak in Title Appeal No.32 of 1997 arising out of the judgment dated 22.04.1997 followed by decree dated 07.05.1997 passed by learned Civil Judge (Jr. Division) Bhadrak in T.S. No.337 of 1990]

AFR

Sk. Idrish

.... Appellant

-Versus-

Sk. Khoda Box and others

.... Respondents

Advocate(s) appeared in this case:

For the Appellant : M/s. Maheswar Mohanty, S. Mohanty, &
J.K. Biswal, Advocates

For Respondents : Mr. S.P. Mishra, Sr. Advocate
with Mr. R.K. Agarwal, Advocate
[For R. 1, 2, 3, & 4(Ka)]

Mrs. Jyotsnamayee Sahoo,
Addl. Standing Counsel [For R-5]

CORAM:

JUSTICE SASHIKANTA MISHRA



JUDGMENT
12th February, 2026

SASHIKANTA MISHRA, J.

This is a defendant's appeal against a reversing judgment. The judgment passed by learned Civil Judge (Jr. Division) Bhadrak in Title Suit No.337 of 1990-I on 22.04.1997 followed by decree dismissing the suit of the plaintiffs was reversed by judgment passed by learned Addl. District Judge, Bhadrak on 28.10.1999 followed by decree in Title Appeal No.32 of 1997.

2. For convenience, the parties are referred to as per their respective status before the Trial Court.

3. The plaintiffs filed the suit for declaration of right, title and interest over the suit land and for declaration that defendants have no manner of right, title, interest over the same, confirmation of possession, recovery of possession, if found dispossessed, and for declaration that the Tenant Ledger (TL) and MS ROR as wrong and for declaration that the suo motu case and mutation case in respect of the suit



land is illegal, void and not acted upon along with permanent injunction.

4. Briefly stated, the case of the plaintiffs is that the suit Khata being CS Khata No.56 was recorded in the name of Jagannath Mahaprabhu and Hemayat Alli Sa with Gajendra Naik, Pranakrushna Naik and Mahendra Nayak as *marfartdars*. Both Hemayat Alli and Jagannath Mahaprabhu had half share each. In an amicable partition, the suit land fell to the share of Hemayat Alli and while possessing the same, he transferred C.S. Plot No. 1086 measuring Ac.0.01 decs. along with other disputed lands to Gulfat Bibi and deceased plaintiff No.4 on 08.08.1931 by a registered permanent lease deed and delivered possession. On 06.08.1931, Hemayat Alli also transferred CS Plot No. 1085 measuring Ac.0.05 dec. along with other disputed lands to the father of plaintiff No.2 and delivered possession. Plaintiff No.4 had got half share in CS Plot No.1086. Gulfat Bibi gifted away her half share of CS Plot No. 1086 along with other disputed land to plaintiff No.1 by a registered gift deed dated



26.02.1965 and delivered possession. One Sk. Rehemman was possessing CS Plot No.1085 and after him, plaintiff No.2 being his son, possessed the same. The deceased plaintiff No.4, Sk. Rehaman and Gulfat Bibi constructed a house over the suit land and paid rent to the ex-landlord, which was subsequently demolished. The daughters of Hemayat Alli are *paradanashin* ladies and Sk. Rehaman was an illiterate man. On the other hand, Gulam Nabi and defendant No.1- Sk. Idrish are clever persons and after death of Hemayat Alli and abolition of estate, Gulam Nabi managed to prepare Tenant Ledger (TL) and also paid rent. According to plaintiffs, no enquiry was conducted as per law before preparation of TL. Gulam Nabi could not have acquired title by virtue of TL. Further, no enquiry was made before preparation of MS ROR for which Gulam Nabi and defendant No.1 managed to record their names in respect of CS Plot No. 1085 by influencing the authorities while CS Plot No. 1086 was recorded as '*Abadajogya Anabadi*'. Since defendant No.1 created disturbance over the suit land by disclosing that TL and MS ROR had been prepared in his name, a proceeding under



Section 145 of Cr.P.C. was initiated. In course of such proceeding, defendant No.1 disclosed about a *suo motu* case bearing No. 21/1 of 1983 being initiated by Tahasildar, Chandbali and Mutation Case No.21/87 whereby, the suit land had been recorded in his name which, according to the plaintiff, is void as no notice was ever served on them nor any spot enquiry was made. The sale deed executed in favour of defendant No.1 is void and never acted upon. In the proceeding under Section 145 Cr.P.C., both the parties were restrained to come over the suit land. On such facts, the suit was filed claiming the reliefs as already stated hereinbefore.

5. Defendant No.1 contested the suit by filing written statement denying all the plaint averments. It is his case that his father and Gulam Nabi are two brothers. Gajendra Nayak and others, being the *marfatdars* of Jagannath Mahaprabhu have 12 annas and 8 pahi interest over the suit land and Gulam Nabi and father of defendant No.1 were tenants with rent being fixed in their favour about 60 years back. The suit land was leased out for agricultural



purposes but Gulam Nabi and his father reclaimed the same and constructed their dwelling house over it by paying rent to the ex-landlord. Since Gulam Nabi was the eldest brother, *ekpadia* was given by the ex-landlord to his name and according to their possession, MS Plot No. 729 corresponding to CS Plot No.1085 was recorded in the name of Gulam Nabi and MS Plot No. 1086 was recorded in the name of Government and they have been paying rent to Government. It is the further case of the defendant No.1 that his lands and that of Gulam Nabi had been partitioned, whereby the suit land fell to his share and his dwelling house stands over the same and he has been possessing it within one enclosure.

6. Defendant No.2 being the State of Odisha did not file any written statement but contested the suit.

7. Basing on the rival pleadings, the trial Court framed the following issues for determination:

- 1. Have the plaintiffs any cause of action?*
- 2. Is the suit barred by law of limitation?*
- 3. Have the plaintiffs acquired any right, title, interest over the suit land?*



4. Is the M.S entry in respect of the suit land wrong and liable to be set aside.

5. Is the deed of gift dt. 26.06.65 in favour of the plaintiffs genuine, valid and acted upon?

6. Are the registered permanent lease deeds 06.08.31 and 08.08.31 in favour of the plaintiffs valid and acted upon?

7. Have Gulam Nabi and Sk. Kala acquired occupancy right in the suit property.

8. Is the plaintiffs possession is true?

9. Whether the defendant no.1 has got right, title, interest over the suit land?

10. Is the property valued and court fees properly paid?

11. What other reliefs, the plaintiffs are entitled?"

8. Issue Nos.3, 5, 6, 7 and 9 were taken up together for consideration by the trial Court at the outset. After going through the oral and documentary evidence on record such as, Exts-19, 6 and 7, the trial Court found that both Hemayat Alli and Jagannath Mahaprabhu were owners of the suit Khata and the suit land but it was held that there was no document from either side regarding amicable partition between the ex-landlords and the so-called allotment of shares. Referring to Ext-19, the trial Court found that Jagannath Mahaprabhu has 12 Annas and 8 Pahi share



while Hemayat Alli had only 3 Annas and 2 Pahi share over the suit land and therefore, it was doubtful as to how Hemayat Alli could transfer the entire suit land in favour of his two daughters when the plea of partition is not proved. On the admissibility of the lease deed dated 06.08.1931 (Ext-20), the trial Court, relying upon the judgment passed by this Court in **Bhaskar Sahu vs. Anama Swara and others**¹ held that Ext-20 being a certified copy, is not admissible in evidence as the plaintiffs had not laid foundation for leading secondary evidence. The Trial Court also found that the land as per CS ROR being not correct, the gift deed executed by Gulfat Bibi is also not correct. The Trial Court also negatived the plea of possession of the plaintiffs. On the other hand, it found that the defendant No.1 had a valid base to claim title such as TL, rent receipts, MS ROR etc. as the same was effected on the basis of *suo motu* case and mutation case. The trial Court thus, disbelieved that the CS Plot No.1086 was sold to defendant No.1 by Gulam Nabi and that his possession was confirmed by the Amin's report as well as the

¹ AIR 1987 ORISSA 138



order of the Tahasildar. The relevant entry in the *Jamabandi* register (Ext-H) was also relied upon to hold that tenancy right was created in favour of Gulam Nabi thereby as the ex-landlord had accepted rent for him. The Trial Court did not find any proof that the *marfatdars* of Jagannath Mahaprabhu delivered possession to Gulam Nabi and the father of defendant No.1. It was thus, held that the suit land belonged to Jagannath Mahaprabhu, which was leased out the same in favour of Gulam Nabi and father of defendant No.1, which is under their possession for more than 40 years, having a house standing thereon. Considering the evidence as a whole, the Trial Court held that the plaintiffs had not been able to establish their right, title and interest as well as possession, rather the defendant No.1 has right, title, interest and possession over the suit land.

9. The remaining issues were also answered against the plaintiffs and the suit was dismissed.

10. Being aggrieved, the plaintiffs carried appeal, which was heard by learned Addl. District Judge, Bhadrak.



After reappreciating the evidence on record, the First Appellate Court was of the view that as per the settled principle of law, no oral lease can be made in respect of property belonging to the deity and therefore, finding to the contrary of the Trial Court is illegal. It was held that the documents marked Exts.4 and 18 are old documents belonging to the year 1931 and therefore, genuineness cannot be doubted on flimsy ground. With regard to Ext.20 also, the First Appellate Court held that the judgment of this Court relied upon by the trial Court is not applicable to the facts of the case as the documents in question had been admitted into evidence with objection raised from the side of the defendants. The First Appellate Court therefore, believed the lease deeds marked Exts-4 and 20, the rent receipts marked Ext- 5 series and the gift deed marked Ext-8 to hold that the ex-landlords had executed the lease deeds as proved by the plaintiffs. As regards the TL, it was held that a person cannot acquire title on such basis alone. Referring to the order passed by the Tahsildar in *suo motu* case No. 21/1987, the First Appellate Court held that the case was closed on



08.09.1987 and thereafter, the Tahasildar directed defendant No.1 to file a Misc. Case for correction and on 16.09.1987, the land was settled in his name, which is illegal. Notice as contemplated in the proviso to Section 8-A(2) being a mandatory provision was not complied with in the suo motu case and therefore, the procedure adopted was illegal. Thus, on such findings it was held that the plaintiffs have acquired right, title, interest and possession over the suit land on the strength of registered lease deeds vide Exts-4, 18 and 20. The appeal was thus, allowed by reversing the judgment of the trial Court and by granting the reliefs claimed by the plaintiffs.

11. Being further aggrieved, defendant No.1 has filed the instant appeal, which was admitted on the following substantial questions of law:

a) As to whether the legality and propriety of an order passed by a statutory authority under the O.E.A. Act can be examined by the Civil Court. Even though it is expressly barred under section 39 of O.E.A. Act.

(b) As to whether the marfatdars of the deity Lord Jagannath who is a recorded tenant in respect of the suit property can induct a lease for agricultural purpose by accepting the rent in an oral lease."



12. Heard Mr. Maheswar Mohanty, learned counsel for the defendant No.1-appellant and Mr. R.K. Agarwal, learned counsel appearing for the plaintiff-respondents. Also heard Mrs. J. Sahoo, learned Addl. Standing Counsel appearing for the State.

13. Mr. Mohanty would argue that the trial Court relying upon Ext-17 rightly held that public notice was issued but no objection was received during the relevant period. Accordingly, the Tahasildar passed order under Ext-14. This aspect has not been considered by the First Appellate Court. Mr. Mohanty further argues that it is settled law that if any procedural illegality or irregularity is shown, the Civil Court can interfere, but in the instant case no such contingency arises. It is also argued that defendant No.1 proved the TL (Ext-B) and rent receipts issued by the ex-landlords (Ext-G series) and relevant entry in the Jamindar hand register (Ext-H), which proved that Sk. Gulam Nabi was inducted as a lessee for agricultural purposes. Ext-L being a registered partition deed dated 11.08.1987 shows that the land was partitioned between Gulam Nabi and defendant



No.1 and the Amin Report (Ext-13) proved that Gulam Nabi had sold the suit land to defendant No.1, whose possession was also reported. Referring to the documents admitted as additional evidence during pendency of the Second Appeal, Mr. Mohanty shows that the suit land has been recorded not only in the major settlement in favour of Defendant No.1 but also in the consolidation ROR.

14. Per contra, Mr. R.K. Agarwal would argue that defendant No.1 not being an ex-landlord or a tenant, the suit land is not liable to be settled in his name under Section 6, 7 or 8 of the OEA Act. Therefore, the order of the OEA authority must be held to be without jurisdiction. The tenant can only claim recognition as such and not settlement of the land. In the absence of *ekpadia*, the TL loses its significance and, on such basis alone, no right can be said to have been acquired in respect of the property. Mr. Agarwal further argues that the mandatory provision under the proviso to Section 8A (2) regarding public notice and proclamation was not complied with for which settlement of land in favour of



Defendant No.1 is illegal. Further, as rightly held by the First Appellate Court, no oral lease can be made in respect of deity's property. Exts- 4, 8 and 20 clearly show that the suit land fell to the share of Hemayat Alli in an amicable partition and was leased out to the plaintiffs. The Trial Court wrongly disbelieved the old documents even though the same could have been admitted as secondary evidence. As regards the documents admitted as additional evidence, Mr. Agarwal would argue that preparation of consolidation ROR after denotification under Section 5 of the OCH & PFL Act on 06.09.2012 will not create any right in favour of defendant No.1 and will also not create a bar for the Civil Court (this Court) to adjudicate the appeal on its merit. In any case, the consolidation ROR having been prepared ignoring the judgment and decree passed by the First Appellate Court, is not binding.

15. As to the first substantial question of law, it is trite law that Section 39 of the OEA Act places a bar on the Civil Court in respect of an order passed by the statutory authority under such Act but then, it is equally well settled



that if there is any procedural illegality or irregularity in the OEA proceeding, the Civil Court can interfere. Reference in this regard may be had to the judgment of the Supreme Court in the case of 1973 (2) CWR 1285.

16. In the case at hand, it is the case of the plaintiffs that no public notice or proclamation was issued as contemplated by the proviso to Sub-Section (2) of Section 8-A of the Act. Ext-14 is the order passed by the Tahasildar in Misc. Case No. 21 of 1987. Ext.14 to 17 shows that objection was invited from the public and the order was passed and no objection was received during the relevant period. It has not been demonstrated as to how this finding of the trial Court is wrong or perverse etc. There is no dispute with regard to the proposition of law as laid in the full bench judgment of this Court in **Basanti Kumar Sahoo vs. State of Odisha**² that where an authority usurps jurisdiction not vested in it, its decision is available to be annulled by a superior Court. But on facts, this Court, as already stated, has found that the Trial Court, relying upon Ext-17 held that public notice was

² 1992 (1) OLR 41



served and therefore, negatived the plea of the plaintiffs regarding adoption of illegal procedure by the OEA authority. The First Appellate Court has not considered the above documents while finding fault with the judgment of the Trial Court and therefore, its finding cannot be sustained. The substantial question of law No.1 is answered accordingly.

17. As regards, substantial question No.2, it is not disputed that the title cannot be claimed by a person only on the basis of TL or rent receipts but then the cumulative effect of all documents relied upon by the party and their comparative worth with that of the evidence adduced by the other party have to be considered. In this respect, the trial Court has raised a doubt and, according to this Court validly so, that when the ex-landlords Jagannath Mahaprabhu and Hemayat Alli had 12 annas 8 pahi and 3 annas 2 pahi share respectively of the suit property as evident from Ext-19, how could Hemayat Alli be accepted to have transferred the entire suit land in favour of his two daughters more so, when the claim of partition between the ex-landlords was not proved. These aspects, which go to the root of the matter have not



been considered at all by the First Appellate Court rendering his judgment vulnerable.

18. Another important aspect is the finding of the First Appellate Court regarding admissibility of certified copy of the lease deed marked, Ext-20. It is settled law that certified copy of a document being in the nature of secondary evidence is admissible in evidence provided the foundation has been laid by the concerned party seeking its admission. The provision under Section 65 of the Evidence Act is mandatory. Law is too well settled in this regard for any judgment to be cited. The First Appellate Court on the other hand, has brushed aside the objection raised on the ground that the certified copy of the registered document is a public document as per Section 74(2) of the Registration Act and when the same is marked without objection no one can object at a later stage. Firstly, this contradicts his own finding in paragraph-12 of the judgment that objection was raised from the side of the defendants and the certified copy, which is a public document, was marked as such. The



conditions necessary to adduce secondary evidence as contemplated under Section 65 of the Indian Evidence Act have not been considered at all.

19. Coming to the comparative worth of the documentary evidence adduced by the parties, this Court finds that the trial Court relied upon the TL and rent receipts issued by the ex-landlord and the entry in the hand register to hold that Sk. Gulam Nabi was inducted as lessee for agricultural purpose. Further, Ext-A being the registered partition deed dated 11.08.1987 disclosed partition between Sk. Gulam Nabi and defendant No.1. The fact of sale of land by Gulam Nabi to defendant No.1 and of the latter's possession is proved from the Amin's report vide Ext-13. As against the overwhelming evidence as above, the First Appellate Court has simply brushed aside the evidence adduced by the defendant No.1 by generally holding that title cannot be claimed on the basis of TL. From what has been narrated before, this Court is unable to persuade itself to accept the reasoning adopted by the First Appellate Court as



correct. The substantial question of law No.2 is answered accordingly.

20. From a conspectus of analysis of facts, law and the contentions raised, this Court is of the considered view that the impugned judgment cannot be sustained in the eye of law warranting interference.

21. In the result, the appeal is allowed. The impugned judgment of the First Appellate Court and the decree passed are set aside. The judgment and decree passed by the Trial Court are hereby confirmed.

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Sashikanta Mishra,
Judge

Orissa High Court, Cuttack
The 12th February, 2026/ A.K. Rana, P.A.

Signature Not Verified

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