

**ORISSA HIGH COURT: CUTTACK.**  
**W.P.(C) Nos. 15086 and 17067 of 2011**

In the matter of applications under Articles 226 and 227 of the Constitution of India

**In WPC No. 15086/2011**

Satimani Ray ..... Petitioner

***-Versus-***

Taramani Bhoi and others ..... Opp. Parties.

**In WPC No. 17067/2011**

Satimani Ray ..... Petitioner

***-Versus-***

Taramani Bhoi and others ..... Opp. Parties.

For Petitioners : M/s. Mahadev Mishra, Sr. Advocate.  
Ms. M.Mishra, B.K. Mishra,  
S.B. Mohanty, G.C.Bhuyan,  
H.N.Mohapatra, A.Samantaray &  
M.R.Behera. (In both)

For opp. parties : M/s. K.B. .Kar &  
S. Pattanayak  
(For O.Ps 2, 3 & 4)

M/s. Sangram Nayak &  
A.K. Parida.  
(For O.Ps 1 & 5).  
(In both)

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**Decided on 31.01.2014**  
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**PRESENT :**

**THE HONOURABLE SHRI JUSTICE M.M. DAS**  
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**M. M. DAS, J.** These two writ applications relate to the disputed question of identity of the plaintiff in C.S. No. 521 of 2008 pending before the learned Additional Civil Judge (Senior Division), Puri.

2. The petitioner in both the writ applications filed the aforesaid suit for declaration of title and confirmation of possession.

She claimed to be the daughter of one Rajendra Chandra Das. The suit property was a lease-hold property, which was purchased by the father of the plaintiff from one Shyam Sundar Pratihari and Kashinath Pratihari in a registered sale deed dated 19.07.1937. It was the case of the plaintiff that she has been paying rent and the lease has been renewed from time to time and in the hal settlement, it has been wrongly recorded in the name of the State Government. The original defendant in the suit, namely, Maga @ Nikha Bhoi since deceased, filed a suit against the State Government, being, T.S. No. 209 of 1986, only impleading the State as a defendant and seeking a decree for permanent injunction. The said suit, on being decreed, the said original defendant and after him, his legal heirs got their names recorded pursuant to the order passed in R.P. Case No. 245 of 1992. On the basis of such decree and ROR, the original defendant threatened to dispossess the plaintiff, for which the plaintiff-petitioner filed the aforesaid suit originally before the learned Civil Judge (Junior Division), Puri, which was transferred to the court of the learned Civil Judge (Senior Division), Puri on the ground of jurisdiction and was assigned the number as C.S. No. 521 of 2008. The original defendant having expired, his legal heirs have been substituted. No written statement was filed by the defendants. However, they are contesting the suit.

3. At this stage, another person naming herself to be Satimani Ray, which is the name of the plaintiff-petitioner, filed an application before the learned trial court claiming that she is the only daughter of late Rajendra Chandra Das, which is the father's name of

the present petitioner. She alleged that in the present suit, she has filed the suit through her Power of Attorney holder Purna Chandra Biswal as an agent, but unfortunately, though the suit was prolonged and fought tooth and nail since 1997 and the said Power of Attorney without her consent, who was the Principal, colluded with the defendant and filed a compromise petition for compounding the suit, which she could come to know when the application under Section 22 of the OLR Act was disposed of by the Sub-Collector, Puri, which was registered as Misc. Case No. 81 of 2004 filed by the wife of the original defendant, who wanted to dispose of the suit property. She has filed a power engaging a Lawyer in the present suit and seeking leave of the court that the earlier Lawyer and Power of Attorney be discharged and the learned Advocate appointed by her be permitted to conduct the case not through the earlier Power of Attorney holder and the earlier Advocate appearing for the plaintiff, as she has withdrawn the alleged Power of Attorney holder and has disengaged the earlier Lawyer appearing. An objection was filed to the said petition by the present petitioner alleging that the said person naming herself to be Satimani Ray, which is the name of the petitioner, is an imposter and not the Principal, who executed the Power of Attorney in favour of Purna Chandra Biswal, who was prosecuting the suit on behalf of the present petitioner.

4. The learned trial court, on the said application, passed an order directing the Lawyers for both the parties to present the original plaintiff with documents. The said order was challenged before this Court in W.P.(C) No. 4978 of 2011, inter alia, stating that the onus is

on the stranger applicant to prove that she is the original plaintiff and that the Power of Attorney has not been cancelled. It has been stated that as per the advice of the lawyer, W.P. (C) No. 4978 of 2011 was not pressed and was disposed of by order dated 21.4.2011 and a fresh petition under Order 26, Rule 10 (A) C.P.C. read with sections 45 and 73 of the Evidence Act was filed by the petitioner before the learned court below. In the said petition which was filed on 29.3.2011, it was stated that since the plaintiff – Satimani Ray is a Christian Missionary activist and used to visit different parts of the Country, it is difficult on the part of the constituted Power of Attorney holder Purna Chandra Biswal to procure her attendance within a short period, for which adjournments were taken earlier. It was further stated that the controversy relating to identity of Satimani Ray can be sorted out for all times to come and it is not necessary at all to await for the appearance of the plaintiff Satimani Ray. A further statement was made that in the meantime, it has been ascertained that the intervenor posing herself as the real plaintiff, cancelled the Power of Attorney executed by the petitioner in favour of Purna Chandra Biswal. When certified copy of Power of Attorney dated 22.08.1994 was applied for, it was found that the same has been cancelled by author deed of 2010 even though Satimani Ray has never come to Puri in 2010. Hence, there are two registered documents dated 22.08.1994, i.e., the original Power of Attorney, which is not disputed by the opposite party – intervenor and cancellation deed of 2010 alleged to have been executed by one and the same person, namely, Satimani Ray. The Sub-Registrar office also preserved thumb impression Register, which is later

preserved in Computer thumb impression record. The proof of identity of a person can be done by the comparison of thumb impression by an expert and no other mode can establish the identity. Therefore, the thumb impression Register of 1994 and the computerized thumb impression record of 2010 are required to be called for from the office of the Sub-Registrar, Puri for sending the same along with the admitted thumb impression of the intervenor to be obtained in Court for comparison and a report from an expert. However, the counter was filed to the aforesaid application that the said application has been filed to linger the suit. The learned court below rejected the petition and, as such the petitioner has filed W.P.(C) No. 15086 of 2011 for quashing the said order dated 30.04.2011 under Annexure – 1. In W.P.(C) No. 17067 of 2011, the petitioner has called in question the orders dated 20.05.2011 and 21.05.2011. The said orders were passed on an application filed by the Power of Attorney holder of the petitioner with a prayer to direct the applicant – intervenor, who claims herself as Satimani Ray to remain present in Court for examination and cross-examination to test her identity. By order dated 21.05.2011, the learned court below accepted the fresh Vakalatnama filed by the Advocate on behalf of the applicant – intervenor on behalf of the plaintiff and rejected the previous Vakalatnama as well as the Power of Attorney.

5. On hearing Mr. Mahadev Mishra, learned senior counsel appearing for the petitioner as well as learned counsel for the opposite parties, this Court finds that there is a dispute with regard to the identity of the plaintiff in C.S. No. 521 of 2008. This Court also finds

that production of the original plaintiff before the learned court below could not have resolved the problems with regard to finding out who is the real plaintiff, i.e., whether the petitioner or the intervenor in the said suit claiming to be actual plaintiff.

6. Since the Power of Attorney executed on behalf of Purna Chandra Biswal is not disputed before the learned court below by the petitioner as well as the intervenor, who claimed to be the real plaintiff and the intervenor claimed to have cancelled the said Power of Attorney in 2010, it would have been appropriate on the part of the court below to call for the original Power of Attorney executed in the year 1994 in favour of Purna Chandra Biswal and the cancellation deed of the said Power of Attorney executed by the intervenor in the year 2010 along with the computerized thumb impression of the 2010 document, which are kept in the office of the Sub-Registrar, Puri and after obtaining the same sent it to an expert for comparison. It is well accepted that the thumb impression of the person is his best identity. Thus, if the report of the expert would indicate that the thumb impression given by the executant in the original Power of Attorney in the year 1994 is either that of the plaintiff or of the intervenor, the same would have clearly amounted to a material, by which the identity of the real plaintiff could have been ascertained.

7. In view of the above position, this Court finds that the learned court below should not have passed the order directing personal appearance of the petitioner to ascertain the identity of the real plaintiff as that would have ended in no result.

8. This Court, therefore, while setting aside the impugned orders dated 30.04.2011, 20.05.2011 and 21.05.2011, directs the learned court below to call for the original registered Power of Attorney executed in the year 1994 in favour of the Power of Attorney holder Purna Chandra Biswal by Satimani Ray as well as the original deed of cancellation of the said Power of Attorney allegedly executed in the year 2010 by the intervenor or the computerized record of the said deed of cancellation of Power of Attorney kept in the office of the Sub-Registrar, instead of hard copy. Thereupon, the learned trial court shall send the aforesaid documents to an expert for being compared. The cost of the expert shall be borne by both the petitioner as well as the intervenor. The learned trial court, on receiving the report, shall proceed to pass further orders on the basis of the said report to find out, who, amongst the two is the original plaintiff.

Till such exercise is done, further proceeding in C.S. No. 521 of 2008 pending before the learned trial court shall remain stayed.

10. With the aforesaid directions, both the writ applications stand disposed of.

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**M.M. Das, J.**

**Orissa High Court, Cuttack.  
 January 31st, 2014/Subha.**

