

## **HIGH COURT OF ORISSA: CUTTACK**

### **S.A. No.263 of 1994**

From the judgment and decree dated 30.7.94 and 18.8.94 respectively passed by Sri P.B. Patnaik, learned Additional District Judge, Jajpur in T.A. No.39 of 1991 confirming the judgment and decree dated 28.9.91 and 31.10.91 respectively passed by Sri J. Mishra, learned Additional Munsif, Jajpur in T.S. No.124 of 1985.

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Abhimanyu Das and another ..... Appellants

--versus--

Krushna Chandra Samal and others ..... Respondents

For Appellants : Mr. Ramakanta Mohanty, Sr. Advocate  
Mr. Kalyana Mohapatra, Advocate

For Respondents : None

### **J U D G M E N T**

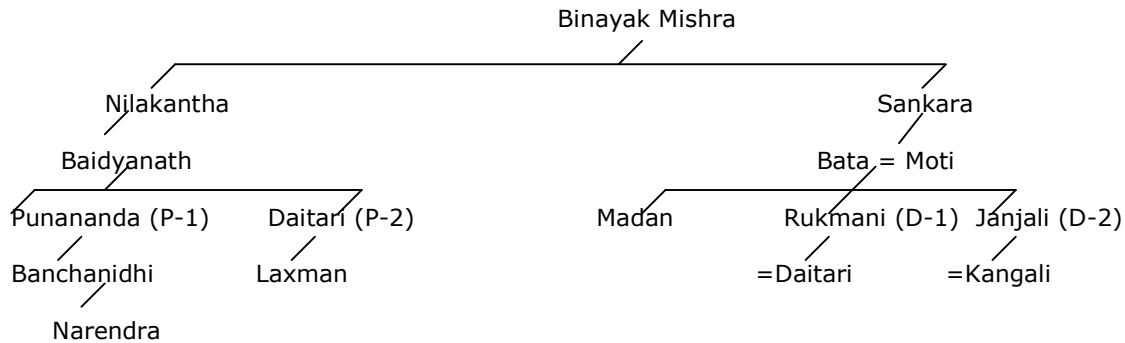
#### **P R E S E N T:**

**THE HON'BLE DR. JUSTICE A.K. RATH**

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Date of Hearing :13.04.2018 | Date of Judgment:30.4.2018  
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**Dr. A.K. Rath, J.** Defendant nos.1 and 5 are the appellants against a confirming judgment.

**2.** Plaintiffs-respondent nos.1 to 4 as well as the predecessor-in-interest of respondent nos.5 to 10 instituted the suit for declaration of title over schedule 'A' land, confirmation of possession, recovery of possession, in the event they are dispossessed during pendency of the suit, permanent injunction and damages. The following genealogy would show the relationship of the plaintiff nos.1 and 2 and defendant nos.1 and 2.



The case of the plaintiffs was that the suit land was recorded in the names of Rukmani and Janjali in the C.S.R.O.R. T.S. No.13/556 of 1930/1928 was instituted by Punananda Mishra and Daitari Mishra against Rukmani and Janjali and others. The suit was decreed on compromise. In the said decree, Punananda and Daitari got the suit properties along with other property. Rukmani and Kangali died. Kangali predeceased Janjali. Janjali approached Punananda and Laxman, son of Daitari, to sell the land for maintenance. Punananda and Laxman sold the suit land along with Ac.0.05 dec. of land appertaining to plot no.942, khata no.73 of village Goundasahi to Janjali for a consideration of Rs.50/- by means of a registered sale deed dated 18.7.44 and delivered possession to her. Thereafter Janjali constructed a house over Ac.0.05 dec. of land. She was in possession of the rest Ac.0.25 dec. of land. After death of Janjali, her husband's sister's sons, namely, Kunja and Trailokya succeeded to the properties. While matter stood thus, Trailokya and Kunja sold the suit land along with the homestead to Gananath Samal, father of plaintiff no.1, Punananda Mishra, Laxman Mishra, Hrusikesh Samal, father of plaintiff nos.2 to 4 and Biswambar Samal, father of defendant no.2 on 16.4.52 for a consideration of Rs.700/- and delivered possession to the vendees. Father of the plaintiff no.1 and father of plaintiff nos.2 to 4 were in possession of Ac.0.10 dec. of land. Ac.0.10 dec. of land was in possession of Punananda and Laxman. Ac.0.05 dec. of land was in possession of father of defendant no.2. On 15.4.61, Laxman, son of Daitari, and Narendra, son of Banchanidhi, sold Ac.0.10 dec. of land to plaintiff nos.1 and 5 for a valid consideration and delivered possession. Plaintiffs became

the owner of Ac.0.20 dec. of land out of the suit land. Father of defendant no.2 sold Ac.0.05 dec. of land to the plaintiffs. It was an oral transaction. Plaintiff no.5 purchased Ac.0.23-5 kadi from Punananda on 18.1.52. Father of plaintiff no.1 purchased Ac.0.23 dec. of land from Laxman from the suit plot no.240 on 10.6.49. By that process, they had purchased the entire suit land. They are in possession of the same. The defendants have no semblance of right, title and interest over the same. On the instruction of defendant no.1, some trespassers entered into the suit land on 4.5.85, cut and removed the paddy crops. With this factual scenario, they instituted the suit seeking the reliefs mentioned supra.

**3.** Defendant no.1 filed written statement denying the assertions made in the plaint. The specific case of the defendant no.1 was that Punananda and Daitari are no way related to Rukmani and Janjali. Daitari never succeeded to the suit land. The decree obtained in T.S. No.13/556 of 1930/1928 was illegal and fraudulent. Krishnapriya is not the sister of Kangali. She is a fictitious lady. Janjali was the absolute owner of the suit land. Janjali died issueless. Her husband predeceased her. Krushna Satpathy was the son of Kangali's brother. After death of Janjali, Krushna Satpathy succeeded to the property. He was in possession of the same. Krushna Satpathy transferred the suit land by means of a registered sale deed dated 6.11.51 to Tauli and Govinda Malik for a valid consideration and delivered possession. Tauli died leaving behind him son, Rabindra. After death of Tauli, Rabindra and Govinda were in possession of the suit land. Govinda and Rabindra sold the suit land by means of a registered sale deed dated 10.4.85 to the defendant no.1 for a valid consideration and delivered possession. Defendant no.1 acquired title by way of adverse possession. The claim of damage is false and vague. The defendant nos.2 to 4 were set exparte.

**4.** The defendant no.5 filed a written statement stating inter alia that Krishnapriya is the sister of Kangali. He and Trailokyanath are the two sons of Krishnapriya. He had not sold the land with his brother, Trailokyanath Panda to the plaintiff's vendor. The alleged sale deed is a

fabricated document. He disputed his L.T.I. over the sale deed. He is the owner in possession of the suit land.

**5.** Stemming on the pleadings of the parties, learned trial court struck nine issues. Parties led evidence, oral and documentary, to substantiate their cases. Learned trial court decreed the suit with the findings that the plaintiffs have right, title and interest and possession over the suit land. The plaintiffs are entitled to damages of Rs.700/-. Felt aggrieved, defendant nos.1 and 5 filed T.A. No.39 of 1991 before the learned Additional District Judge, Jajpur, which was eventually dismissed.

**6.** The second appeal was admitted on the substantial questions of law enumerated in ground no.2 of the memorandum of appeal. The same are:

“(a) Whether the plaintiffs can succeed without establishing their source of title when admittedly the alleged source, namely, the compromise decree of T.S. No.13/556 of 1930/1928, has not been proved.

(b) Whether the learned courts below were correct in decreeing the Ac.0.05 dec. when admittedly the plaintiffs have not proved such acquisition.

(c) Whether the plaintiffs can succeed because of non-challenge by defendant no.2, without proving their own case on merits, when admittedly the acquisition of Ac.0.05 decs. is by oral sale which is invalid in law.”

**7.** Heard Mr. R.K. Mohanty, learned Senior Advocate along with Mr. Kalyan Mohapatra, learned Advocate for the appellants. None appeared for the respondents.

**8.** Mr. Mohanty, learned Senior Advocate for the appellants, submitted that Krishnapriya is not the sister of Kangali. Krishnapriya is no way related to Kangali. Learned lower appellate court abruptly came to a conclusion that after death of Janjali, the property devolved upon to Krishnapriya and on her death to defendant no.5 and Trailokyanath. The finding is perverse. He further submitted that defendant no.2 had not alienated Ac.0.05 dec. of land in favour of the plaintiffs. Though the plaintiffs assert that the same was an oral transaction, but they failed to

substantiate their case. Learned lower appellate court committed a manifest illegality in holding that since defendant no.1 has not challenged the alienation, the oral sale is valid.

**9.** The compromise decree passed in T.S.No.13/556 of 1930/1928 has no relevance since the parties admit that Janjali was the owner of the suit property. The plaintiffs assert that after death of Janjali, Krishnapriya, sister of her husband, succeeded to the property. Kunja and Trailokyanath, sons of Krishnapriya, alienated the property to the plaintiffs. The defendants assert that Krishna, son of Kangali's brother, alienated the property. Both the courts concurrently held that Krishnapriya is the sister of Kangali. Krishna is not the brother of Kangali. There is no perversity in the said finding.

**10.** According to the plaintiffs, father of defendant no.2 alienated Ac.0.05 dec. of land. It was an oral sale. Learned appellate court held that since defendant no.2 had not contested the case and value of the property was less than Rs.100/-, the sale was valid. The plaintiffs have to stand or fall on their case. Merely because defendant no.2 did not contest the suit, the same is not per se a ground to declare the title of the plaintiffs. There is no evidence on record that the plaintiffs have sustained loss of Rs.700/-. The findings of the learned appellate court on that score are perverse. The substantial questions of law are answered accordingly.

**11.** Resultantly, the appeal is allowed in part. The suit is decreed to the extent indicated above.

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**Dr. A.K. Rath,J.**