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**IN THE HIGH COURT OF ORISSA AT CUTTACK**

**CMP No. 1292 OF 2023**

(An application under Article 227 of the  
Constitution of India, 1950)

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*Prava Das and others* .... *Petitioners*

-versus-

*Akshya Kumar Swain and another* .... *Opp. Parties*

*Advocate for the Parties*

For Petitioners : Mr. Khetra Mohan Dhal, Advocate

For Opposite Parties : Mr. Susanta Kumar Dash, Advocate

**CORAM:**

**JUSTICE K.R. MOHAPATRA**

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Heard and disposed of on 16.01.2024  
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**JUDGMENT**

1. This matter is taken up through hybrid mode.
2. Memo of appearance of Mr. Dash, learned counsel for Opposite Parties filed in Court is taken on record.
3. Order dated 25<sup>th</sup> July, 2023 (Annexure-9) passed by learned 3<sup>rd</sup> Additional District Judge, Cuttack in Civil Revision No.3 of 2023 is under challenge in this CMP, whereby order dated 18<sup>th</sup> January, 2023 (Annexure-7) passed by learned 5<sup>th</sup> Additional Senior Civil Judge, Cuttack in Civil Suit No. 112 of 2019-I, has been set aside.
4. Civil Suit No.112 of 2019-I has been filed for the following reliefs.

“27. That the Plaintiffs therefore pray :

- A) That a decree declaring the partition effected in Case no.37 of 2016 U/s 19 (1)(C) of the Orissa Land Reforms Act to be without jurisdiction, illegal and void may be passed;
- B) That a decree declaring the registered sale deed Nos.2202 and 2203 D.6.7.2018 and Sale deed no.2586 D.10.8.2018 of the Registering Officer, Jagatpur to be illegal, invalid and not binding against the Plaintiffs may be passed;
- C) That a decree for perpetual injunction may be passed against D. nos.5 and 6 restraining them from coming upon the disputed property described in Schedule – ‘A’ below and making any construction thereon;
- D) That a decree for costs of the sit may be passed against the defendants;
- E) That the Plaintiffs may be granted such other relief or reliefs to which they may be found entitled under law and equity.”

5. On receiving summons, Defendants appeared. Defendant Nos.5 and 6 filed an application under Order VII Rule 11(d) CPC to reject the plaint on the ground that civil Court has no jurisdiction to grant relief in respect of validity of an order passed under Section 19(1)(c) of the Odisha Land Reforms Act, 1960 (for short the ‘OLR Act’). Plaintiffs filed objection to the same. Learned trial Court considering the case of the parties, rejected the petition, vide order under Annexure-7. Assailing the same, the Defendant Nos. 5 and 6 preferred Civil Revision No.3 of 2023 and the impugned order has been passed under Annexure-9 setting aside the order passed under Annexure-7 and granting liberty to the Plaintiffs-Petitioners to redress their grievances against the order passed by the Tahasildar, Tangi-Choudwar under Section 19(1)(c) of the OLR Act before competent appellate authority under the said Act.

6. The matter was listed on 1<sup>st</sup> December, 2023 for admission. On the said date, Defendant Nos.5 and 6 (Opposite Parties herein) entered appearance through Caveat. A preliminary objection was raised with regard to maintainability of a CMP (under Article 227 of the Constitution of India) against an order rejecting a plaint.

7. Mr. Dhal, learned counsel for the Petitioners, in response to this said objection, relied upon a decision in the case of ***Frost International Limited Vs. Milan Developers and Builders Pvt. Ltd. and another***, reported in (2022) 8 SCC 633, wherein it is held as under:-

“27. Therefore, we hold that the High Court was not right in observing that the Revisional Court had exceeded its jurisdiction and it could not have allowed the application filed under Order 7 Rule 11 CPC and thereby reversed the order of the trial court and finally disposed of the suit. In fact, the High Court has failed to appreciate the second proviso to Section 115 CPC (Orissa Amendment) in its true perspective. The Revisional Court, being the High Court or the District Court, as the case may be, can reverse an order which would finally dispose of the suit or other proceeding. That is exactly what has been done by the Revisional Court being the District Court in the petition being CRP No. 5 of 2012.

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31. No doubt rejection of a plaint is a decree within the meaning of Section 2(2)CPC and an appeal lies from every decree passed by any court exercising original jurisdiction to the court authorised to hear appeals from a decision of such court. However, it must be borne in mind that when a Revisional Court rejects a plaint, in substance, an application filed under Order 7 Rule 11 is being allowed. Under such circumstances, the remedy by way of a writ petition under Article 227 of the Constitution could be availed and Respondent 1/the plaintiff has resorted to the said remedy in the instant case; although if the plaint had been rejected by the trial

*court i.e. court of original jurisdiction, it would have resulted in a right of appeal under Section 96 CPC”  
(emphasis supplied)*

In view of the above, this Court while holding the CMP to be maintainable, issued notice to the Opposite Parties and granted interim order.

8. Mr. Dhal, learned counsel for the Petitioners submits that learned revisional Court committed error of law in allowing the Revision Petition and thereby rejecting the plaint. Although the relief claimed in Para-27(A) of the plaint may be subject to the jurisdiction of revenue Court under Section 58 of the OLR Act, but rest of the reliefs cannot be entertained by a revenue Court. He also relied upon a decision in the case of **Sudarsan Patra Vs. Dayanidhi Mishra**, reported in 1974 (I) CWR 475, wherein this Court held as under:-

*“7. The next point urged by Mr. Mishra is that the suit out of which this appeal arise is not maintainable in view of the provisions contained in section 193(b) of the Orissa Tenancy Act. This contention of Mr. Mishra is also without any force. Claim for arrear salary and for recovery of the amounts advanced by the plaintiff as loan to the defendant cannot be entertained in a rent court. By no stretch of imagination, it can be said that the plaintiff's suit for recovery of the aforesaid sums is cognizable by a rent court, Law is well settled that the civil court has jurisdiction to entertain all suits, except those whose cognizance by it is either expressly or by implication barred. Section 193(b) of the O.T. Act, in my opinion does not either expressly or by implication bar the cognizance of the suit instituted by the present plaintiff. That being so, it cannot be said that the civil court has no jurisdiction to entertain the present suit as contended by Mr. Mishra. It is also well settled that when a part of the plaintiff's claim is cognizable by a civil court and the other part is cognizable by a revenue court, the civil court will have the jurisdiction to entertain the suit for the whole claim, even though a part*

*of it is cognizable by a revenue court. Thus, under no circumstances it can be said that the plaintiff's suit is not maintainable in the civil court. No other point has been raised before me."*

*(emphasis supplied)*

He, therefore, submits that even though prayer made at Para-27(A) of the plaint may be subject to the jurisdiction of a revenue Court, but the rest part of the relief claimed in the suit can be adjudicated by the civil Court. Thus, it is only the civil Court which can take cognizance of the entire relief claimed in the suit. He further submits that there is an allegation of fraud and infraction of procedure by the revenue Court while entertaining the application under Section 19(1) (c) of the OLR Act. Hence, there is no bar under law for the civil Court to entertain a suit in view of the provision under Section 9 CPC. In the instant case, it is alleged that the Plaintiffs who are successors of one of the pre-deceased co-sharers, namely, Prabir Kumar Das, were neither signatories to the memorandum of partition nor to the order passed by the revenue Officer. As such, civil Court has the jurisdiction to entertain the suit. In support of his submission, he relied upon the case of **Smt. Parbati Mallick Vs. Laxman Mishra and others**, reported in 2014 (I) CLR 548, wherein it is held as under:-

*"8. It is no more res integra that fraud vitiates all solemn actions and finding of fraud is a finding of mixed question of facts and law. It is also well settled that civil court's jurisdiction is not ousted if procedural irregularities in a case conducted by a tribunal or a statutory authority are well proved before it and the civil court has jurisdiction to decide the said question which is vested in it under section 9 of the C.P.C. It is also well settled that when fraud is revealed, a court has inherent power to recall its order as fraud and justice can never dwell together. A judgment of a court cannot be allowed to stand, if it has been obtained by playing fraud. The*

*Supreme Court in the case of Indian Bank v. M/s. Satyam Fibres (India) Pvt. Ltd., AIR 1996 SC 2592 has laid down that the judiciary in India possesses inherent power to recall its judgment or order if it is obtained by fraud on Court and the above principles will also apply to statutory Tribunal.”*

He, therefore, submits that jurisdiction of the civil Court is not ousted when there is procedural irregularity in adjudicating a matter by any Tribunal or statutory authority and fraud has been practised by a party to obtain the order before the Court of limited jurisdiction or Tribunal under a Special statute. It is his submission that Section 19(1)(c) of the OLR Act reads as under:-

*“19. Partition among co-sharer raiyats how to be effected-*

*(1) No partition of a holding among co-sharer raiyats shall be valid unless made by*

*xx*

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*xx*

*(c) an order of the Revenue Officer in the manner prescribed, on mutual agreement.”*

Corresponding Rule 19A, the Orissa Land Reforms (General) Rules, 1965 (for brevity ‘the Rules’) provides the procedure to deal with an application under the Section 19(1)(c) of the OLR Act. Relevant portion of Rule 19A necessary for our discussion reads as under:-

*“19A (3) Such an application shall be made, to the Revenue Officer by all the co-sharer raiyats either personally or through their authorised agents.*

*xxx*

*xxx*

*xxx*

*19A (6) Before passing orders, the Revenue Officer shall obtain the signature or the thumb impression of all co-sharer raiyats or their authorised agents on the body of the record signifying their consent to partition the holding on mutual agreement.”*

Since the Plaintiffs-Petitioners are neither parties in the petition under Section 19(1)(c) of the OLR Act nor signatories to the so-

called memorandum of partition and the order passed by the revenue Officer under Section 19(1)(c) of the Act, civil Court has jurisdiction to entertain a suit of present nature and examine the same. He also placed reliance on a decision of the Full Bench of this Court in the case of *Magulu Jal and others Vs. Bhagaban Rai and others*, reported in OLR Full Bench (1975) 333 in support his submission. In view of the above, he submits that it is only the civil Court, which can take cognizance and adjudicate the suit. Learned revisional Court exceeding its jurisdiction has passed the impugned order granting liberty to the Petitioners to approach the appellate authority under the OLR Act. He, therefore, prays for setting aside the impugned order and to hold that the suit is maintainable.

9. Mr. Dash, learned counsel for Opposite Parties refutes the submission made above. It is his submission that the ratio in *Frost International Limited (supra)* may not be applicable to the instant case, as the issue before the Hon'ble Supreme Court was whether the revisional Court has jurisdiction to reject a plaint in exercise of power under Order VII Rule 11 CPC. In the instant case, no such issue is raised. He, however, submits that the ratio decided in the said case is binding and holds the field.

9.1 It is further submitted that the pleadings in the plaint have to be read as a whole while considering the application under Order VII Rule 11 CPC. If the averments made in the plaint are read as a whole, it unerringly leads to the conclusion that there was a partition recorded by the revenue Court under Section 19(1)(c) of the OLR Act. Statutory remedy of appeal under

Section 58 of the OLR Act is efficacious to deal with the objection raised by the Plaintiffs in respect of the order passed under Section 19(1)(c) of the OLR Act. The civil Court has jurisdiction to decide the matter when the Plaintiff is remediless. But in the instant case, an efficacious statutory remedy is available to the Plaintiffs-Petitioners to get the order passed under Section 19(1)(c) of the OLR Act set aside. Rest of the reliefs claimed in the plaint are only consequential to the declaration, if any, that the order under Section 19(1)(c) of the OLR Act is illegal. Unless and until the order under Section 19(1)(c) of the OLR Act is set aside, no further relief can be granted in the suit. It is his submission that after partition was recorded under Section 19(1)(c) of the OLR Act, the co-sharers got the land mutated in their names. Accordingly, Defendant Nos.1 to 3 executed the sale deed in question in favour of Defendant Nos.5 and 6. No relief either to declare the sale deed in favour of the Opposite Parties to be void and illegal or permanent injunction against them can be granted unless the order recording partition is set aside. Thus, the relief claimed under Paras-27(B) and 27(C) of the plaint are dependent upon the outcome of the prayer made in para- 27 (A). In that view of the matter, the plaint has been rightly rejected. If the competent revenue Court sets aside the order passed under Section 19(1)(c) of the OLR Act, the Plaintiffs may file a suit for rest of the reliefs and not before that. He further submits that while adjudicating a petition under Order VII Rule 11 CPC, a duty is cast upon Court to determine whether the plaint discloses a cause of action by scrutinizing the averments made in the plaint



read in conjunction with the documents relied upon, or whether the suit is barred by any law. In the instant case, the revisional Court scrutinizing the documents relied upon by the Plaintiffs has come to a conclusion that the relief claimed in the suit is barred under law in view of the bar under Section 67 of the OLR Act. Reliance is also placed in the case of ***Dahiben Vs. Arvindhbai Kalyanji Bhanusali (Gajra) dead through Legal Representatives and others***, reported in (2020) 7 SCC 366 in which it is held as under:-

*“23.11. The test for exercising the power under Order 7 Rule 11 is that if the averments made in the plaint are taken in entirety, in conjunction with the documents relied upon, would the same result in a decree being passed. This test was laid down in Liverpool & London S.P. & I Assn. Ltd. v. M.V. Sea Success I [Liverpool & London S.P. & I Assn. Ltd. v. M.V. Sea Success I, (2004) 9 SCC 512] which reads as : (SCC p. 562, para 139)*

*“139. Whether a plaint discloses a cause of action or not is essentially a question of fact. But whether it does or does not must be found out from reading the plaint itself. For the said purpose, the averments made in the plaint in their entirety must be held to be correct. The test is as to whether if the averments made in the plaint are taken to be correct in their entirety, a decree would be passed.”*

He, therefore, submits that learned revisional Court has committed no error much less any jurisdictional error in passing the impugned order. Hence, he prays for dismissal of the CMP.

**10.** Heard learned counsel for the parties; perused the case record as well as case laws cited by learned counsel for the parties. This Court, while issuing notice in the matter, recorded a finding that in view of the ratio in ***Frost International Limited (supra)***, the CMP is maintainable against an order

passed under Order VII Rule 11 CPC by the revisional Court. It does not amount to decree under Section 2(2) CPC. However, on perusal of the impugned order under Annexure-9, it appears that learned revisional Court has not recorded any finding rejecting the plaint. It has only observed as under:-

*“.... Hence taking the above facts and circumstances and intention of Legislature of the Act to avoid multiplicity of proceeding and the decision of the Hon'ble Court in the judgments cited supra, this Court is of the view that the bar u/s. 67 of the OLR Act is squarely applicable to the present case and as such in the interest of justice the plaint filed by the plaintiffs in CS No.112 of 2019 should be rejected as per Order 7, Rule 11(d) CPC. ....”*

But there is no finding allowing such application. While setting aside the impugned order under Annexure-9, the revisional Court only granted liberty to the Plaintiffs to raise their grievance against order passed by the Tahasildar, Tangi-Choudwar under Section 19(1)(c) of the OLR Act before the competent appellate authority for adjudication. No specific finding either rejecting the plaint or allowing application under Order VII Rule 11(d) CPC has been recorded by the revisional Court.

**10.1.** Section 67 of the OLR Act reads as under:-

*“67. **Bar of jurisdiction of Civil Courts.**—  
Save as otherwise expressly provided in this Act, no Civil Court shall have jurisdiction to try and decide any suit or proceeding so far as it relates to any matter which any officer or other competent authority is empowered by or under this Act to decide.”*

It clearly stipulates that the civil Court lacks jurisdiction to adjudicate a dispute between the parties, which the Officer or competent authority is empowered by or under the OLR Act to decide. In the instant case, Plaintiffs-Petitioners have a remedy

under Section 58 of the OLR Act to file an appeal against the order under Section 19(1)(c) of the said Act. Thus, in view of the bar under Section 67 of the OLR Act, it *prima facie* appears that the civil Court lacks jurisdiction to adjudicate upon the relief claimed under para-27 (A) of the plaint. At the same breath it can be said, the Plaintiffs claimed that the order passed under Section 19(1)(c) of the OLR Act has been obtained by practicing fraud and without following due procedure of law. Mr. Dhal, learned counsel categorically submitted that mandatory procedure under Rule 19A (3) and (6) of the Rules were not followed while entertaining the application under Section 19(1)(c) of the OLR Act. Neither the petition under Section 19(1)(c) was filed by all the co-sharers nor the Revenue Officer, namely, Tahasildar, Tangi-Choudwar, obtained signature of all the co-sharers, namely the Petitioners before passing the order of partition. The same can be ascertained from the documents appended to the plaint. When there is a procedural error committed by the statutory authority in deciding a matter under a special statute, the civil Court has jurisdiction to adjudicate it even if the suit is barred under the said statute. Further, in the case of *Mangulu Jal (supra)*, Full Bench of this Court categorically laid down the law as under:-

*“20. The following principles may be laid down as well settled by the aforesaid authorities :*

*(i) Exclusion of the jurisdiction of the Civil Court is not to be readily inferred. Such exclusion must either be explicitly expressed or clearly implied.*

*(ii) Even if jurisdiction is so excluded, Civil Courts have jurisdiction to examine into cases where the provisions of the Act have not been complied with or the statutory tribunal has not acted in conformity with the fundamental principles of judicial procedure. Civil Court*

would interfere if it finds the order of the special tribunal is unfair, capricious or arbitrary.

(iii) Where a liability not existing at common law is created by statute which at the same time gives a special and particular remedy for enforcing it, a remedy provided by the statute must be followed and the Court's jurisdiction is ousted. The scheme of the particular Act is to be examined to see if remedies normally associated with actions in Civil suits are prescribed by the statute.

(iv) The Legislature may entrust the special tribunal or body with a jurisdiction which includes the jurisdiction to determine whether the preliminary state of facts exists as well as the jurisdiction, on finding that it does exist, to proceed further or to do something more. The Legislature shall have to consider whether there shall be an appeal from the decision of the tribunal as otherwise there will be none. In cases of this nature, the tribunal has jurisdiction to determine all facts including the existence of preliminary facts on which exercise of further jurisdiction depends. In the exercise of the jurisdiction the tribunal may decide facts wrongly or if no appeal is provided therefrom there is no appeal from the exercise of such jurisdiction.

(v) Even in a case when the Civil Court would have jurisdiction on a finding that the special tribunal has acted beyond the scope of its authority as in point No. (ii), it cannot substitute its own decision for that of the tribunal but would give a direction to dispose of the case in accordance with law.”

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(emphasis supplied)

11. Thus, when there is an allegation of procedural infraction is made, statutory bar to maintain a suit will not come on the way of the competent civil Court to entertain and adjudicate a suit. Learned revisional Court although noted the principles decided in **Mangulu Jal (supra)**, but has not discussed the applicability of Para- 20(ii) of the same to the instant case. Of course, an appeal under Section 58 of the OLR Act is provided against an order Section 19(1)(c) of the OLR Act, But, in view of the ratio in the case of **Sudarsan Patra (supra)** when a part of the claim of the Plaintiff is cognizable by a civil Court and the other part is cognizable by a revenue Court, the civil Court

will have the jurisdiction to entertain the suit for the whole claim, even though a part of it is cognizable by a revenue Court. In the instant case, the petition under Order VII Rule 11 CPC is filed on the allegation that the relief against order passed under Section 19(1)(c) of the OLR Act is not cognizable by the civil Court. But, if the ratio in *Sudarsan Patra (supra)* is applied, the conclusion may be different. It is, however, submitted by Mr. Dash, learned counsel for Opposite Parties that relief claimed in para 27(B) and (C) of the plaint are consequential to the relief sought for in para- 27 (A). Thus, he submitted that unless the relief sought for in para 27 (A) is granted in favour of the Plaintiffs-Petitioners, there will be no cause of action to claim relief under para 27(B) and (C). As it appears, this aspect was neither raised nor discussed by the revisional Court. Sufficient material is not available before this Court to appreciate rival contention of both learned counsels. The real test to entertain an application under Order VII Rule 11 CPC would be to find out whether the Plaintiff will be entitled to the relief claimed in the plaint if averments in entirety made therein are accepted to be correct.

**11.1.** In addition to the above, learned revisional Court has not recorded any finding regarding fate of the petition under Order VII Rule 11 (d) CPC filed by Opposite Parties.

**12.** In view of the above, this Court feels that the matter requires fresh consideration by the revisional Court keeping in mind the discussions made above.

**13.** Accordingly, the impugned order under Annexure-9 is set aside and the matter is remitted to learned 3<sup>rd</sup> Additional District Judge, Cuttack to adjudicate Civil Revision No.3 of 2023 afresh giving opportunity of hearing to the parties concerned keeping in mind the discussions made hereinabove.

**14.** With the aforesaid observation and direction, the CMP is allowed. However, in the facts and circumstances of the case, there shall be no order as to costs.

**15.** Interim order dated 1<sup>st</sup> December, 2023 passed in IA No.1228 of 2023 stands vacated.

Issue urgent certified copy of the judgment on proper application.

**(K.R.Mohapatra)**  
**Judge**

*s.s.satapathy/  
santanu*