

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.159/2025
(@SPECIAL LEAVE PETITION (CIVIL) No.686/2025
(@Diary No.28071/2024)

KRUSHNA CHANDRA BEHERA & ORS.

Appellant(s)

VERSUS

NARAYAN NAYAK & ORS.

Respondent(s)

O R D E R

1. Heard the learned counsel appearing for the parties on delay.
2. We are convinced that the sufficient cause assigned for the delay of 462 days in filing the present appeal.
3. The delay is, accordingly, condoned.
4. Leave granted.
5. This appeal is at the instance of the original plaintiffs seeking to challenge the judgment and order passed by the High Court of Orissa at Cuttack dated 23-12-2022 in Regular Second Appeal No.38/2019, by which the High Court allowed the Second Appeal filed by the respondents - herein (original defendants) and thereby dismissed the Suit filed by the plaintiffs seeking permanent injunction.
6. The plaintiffs instituted a Title Suit No.174/1983 praying for the following reliefs:-
 - "a) the defendant be perpetually enjoined not to enter upon the suit land and not to interfere with the possession of the plaintiff over the suit land.

b) the defendant be temporarily enjoined not to enter upon the suit land till the disposal of the suit and not to cut the present standing paddy crops.

c) Cost of the suit be given to the plaintiff.

d) any other relief to which the plaintiff is entitled to be given to him."

7. In the Title Suit, the Trial Court framed the following issues:-

"I. Is the suit maintainable?

II. Is the deed dated 24.12.58, out and out a sale deed with condition to repurchase or it was a deed of mortgage with conditional sale?

III. Is the deed dated 24.12.58 executed by Uma Bewa invalid and fraudulent?

IV. Has the plaintiff undisputed title and possession over the suit land?

V. Whether the plaintiff or the defendant has perfected his title over the soil land by way of adverse possession?

VI. To what reliefs or relief if any the plaintiff is entitled to?"

8. The Title Suit ultimately came to be allowed. The Trial Court passed a decree.

9. The operative part of the order passed by the Trial Court reads thus:-

"The suit be and the same is decreed on contest against the defendants, but no order as to the cost."

10. The defendants being dissatisfied with the judgment and decree passed by the Trial Court first preferred Regular First Appeal before the District Judge, Jajpur. The First Appeal came to be

dismissed thereby affirming the judgment and decree passed by the Trial Court.

11. The defendants thereafter went before the High Court by way of a Second Appeal under Section 100 of the Civil Procedure Code, 1908.

12. The High Court framed the following substantial questions of law for its consideration:-

"(i) Whether on the rival case of the parties giving rise to involvement of complicated question of title as also competing claim in respect of the suit property covered under the deed which is being, differently projected by the parties, the Courts below have erred in law by decreeing the suit for permanent injunction simpliciter without the prayer of the declaration of the title and possession?

(ii) Whether the Courts below are right in construing Ext.1 as out and out deed of sale by ignoring the evidence on record as to the surrounding circumstances and the settled law in the field for construction of the document when one side projects it to be out and out sale and other claims it to be a mortgage by conditional sale?"

13. The High Court answered the first question of law, referred to above, in favour of the defendants and as against the plaintiffs and allowed the Second Appeal thereby setting aside the judgment and decree passed by the Trial Court as well as the judgment and order passed by the First Appellate Court, referred to above.

14. In such circumstances, referred to above, the appellants (original plaintiffs) and here before this Court with the present appeal.

15. We have heard Mr. Karunakar Mahalik, the learned counsel appearing for the appellants and Mr. Tom Joseph, the learned counsel appearing for the Respondent Nos.2 to 4 - defendants on caveat.

16. We take notice of the fact that the only ground that weighed with the High Court in allowing the Second Appeal and thereby dismissing the suit of the plaintiffs is that the plaintiffs failed to pray for any declaration and their suit simpliciter for injunction according to the High Court could not be said to be maintainable.

17. In the entire impugned judgment of the High Court, we do not find any discussion as regard the dispute relating to the title of the property.

18. The law is well settled that if the defendants do not dispute the title of the plaintiffs then the suit should not fail only on the ground that the matter has been filed only for injunction simpliciter and no main relief in the form of declaration has been prayed for.

19. When the learned counsel appearing for the respondents (original defendants) was confronted with this, he submitted that since the defendants are in possession, it was obligatory on the part of the appellants - herein as plaintiffs to pray for main relief seeking possession of the suit property.

20. It appears that an absolutely new case is sought to be made out so far as the aspect of possession is concerned.

21. The High Court has not said a word about who is in possession of the suit property.

22. We are of the view that the High Court has not dealt the Second Appeal in accordance with law and has failed to consider relevant vital issues affecting the rights of the parties to the litigation.

23. In such circumstances, we set aside the judgment and order passed by the High Court and remit the matter back to the High Court for fresh consideration of the Second Appeal in accordance with law.

24. The Second Appeal is ordered to be restored to the original file of the High Court of Orissa at Cuttack.

25. Let the Second Appeal now be decided by the High Court afresh in accordance with law within a period of three months from today.

26. The appeal is disposed of in the above-terms.

27. Pending applications, if any, also stand disposed of.

.....J
(J.B. PARDIWALA)

.....J
(R. MAHADEVAN)

NEW DELHI
6THE JANUARY, 2025.

ITEM NO.8

COURT NO.14

SECTION XI-A

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

SPECIAL LEAVE PETITION (CIVIL) Diary No.28071/2024

[Arising out of impugned final judgment and order dated 23-12-2022 in RSA No. 38/2019 passed by the High Court of Orissa at Cuttack]

KRUSHNA CHANDRA BEHERA & ORS.

Petitioner(s)

VERSUS

NARAYAN NAYAK & ORS.

Respondent(s)

(IA No. 300746/2024 - APPLICATION FOR CONDONATION OF DELAY IN FILING THE APPLICATION FOR SETTING ASIDE THE ABATEMENT, IA No. 300744/2024 - APPLICATION FOR SUBSTITUTION, IA No. 300743/2024 - CONDONATION OF DELAY IN FILING SLP, IA No. 300749/2024 - CONDONATION OF DELAY IN REFILEING SLP, IA No. 300748/2024 - EXEMPTION FROM FILING O.T., IA No. 300742/2024 - PERMISSION TO FILE SPECIAL LEAVE PETITION & IA No. 300745/2024 - SETTING ASIDE AN ABATEMENT)

Date : 06-01-2025 This matter was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE J.B. PARDIWALA
HON'BLE MR. JUSTICE R. MAHADEVAN

For Petitioner(s)

Mr. Karunakar Mahalik, AOR
Mr. Rohan Thawani, Adv.
Mr. Manoj Kumar, Adv.
Mr. Dharmendra Kumar, Adv.

For Respondent(s)

Mr. Tom Joseph, AOR
Mr. Kumar Gaurav, Adv.
Mr. B. Ravindra Kumar, Adv.

UPON hearing the counsel the Court made the following
O R D E R

1. Application seeking condonation of delay in filing setting aside the abatement is allowed, abatement is set aside, application for substitution is allowed, application seeking permission to file the Special Leave Petition is granted, delay condoned and application for exemption is allowed.

2. Leave granted.
3. The appeals are disposed of, in terms of the signed order.
4. Pending applications, if any, also stand disposed of.

(VISHAL ANAND)
ASTT. REGISTRAR-cum-PS

(POOJA SHARMA)
COURT MASTER (NSH)

(Signed Order is placed on the file)