



IN THE HIGH COURT OF ORISSA AT CUTTACK

AFR

**I.A. No.14177 of 2025
(Arising out of W.P.(C) No.6232 of 2025)**

**Hadubandhu @ Hadibandhu Petitioner
Sahoo**

Mr. S.S. Das, Senior Advocate
Mr. S.S. Pradhan, Advocate

-Versus-

Kalandi Sahoo and another Opposite Parties

Mr. Brahmananda Tripathy, Advocate for O.P. No.2

**CORAM:
JUSTICE R.K. PATTANAİK**

DATE OF HEARING:09.12.2025

DATE OF ORDER:23.03.2026

1. Instant petition is filed by opposite party No.2 seeking recall of the Court's order dated 13th March, 2025 in W.P.(C) No.6232 of 2025 and to modify the same keeping in view of the final decree passed in C.S. No.7187 of 2014 vide Annexure-F and the orders therein as at Annexures-A to E and to issue necessary directions in that regard as deemed just and proper in the facts and circumstances of the case.

2. The petitioner filed FAO No.129 of 2023 disposed of by the learned 3rd Additional District Judge, Bhubaneswar vide Annexure-6, whereby, an order of status quo in I.A. No.558 of 2007 arising out of C.S. No.713 of 2007 made absolute by the learned Civil Judge, Senior Division (LR<V), Bhubaneswar as per Annexure-5 was set aside. Being aggrieved of, the petitioner filed the writ petition and by order dated 13th March, 2025 therein while disposing of,



restored the order of status quo in respect of the schedule property thereby setting aside the order in the FAO. The aforesaid order is sought for to be recalled by opposite party No.2 on the grounds inter alia that the learned court below did not err while setting aside the status quo order in C.S. No.713 of 2007 in view of a decree in T.S. No.108/704 of 2002/2000 of the court of learned Civil Judge (Senior Division), Bhubaneswar in respect of the subject in dispute and the same having attained finality with the dismissal of SLP(C) No.14118 of 2013.

3. The petitioner filed reply and questioned the claim of opposite party No.2 on the ground that the schedule property is succeeded by them and referring to the genealogy, it is pleaded that the parties are not agnates. It is further pleaded that after the death of the petitioner's father, the schedule property left by him was succeeded by the petitioner and others, inasmuch as, defendant No.1 in the suit, namely, Gouranga Sahoo is a stranger to the family and has no semblance of right over the same. It is also pleaded that the learned court below committed serious wrong in setting aside the order of status quo pending disposal of the suit in C.S. No.713 of 2007 and it was on an erroneous assumption that such an order arrived in the year 2023. Referring to the orders of the learned Civil Judge, Senior Division, Bhubaneswar in the suit, it is further pleaded that the order of status quo dated 25th September, 2007 was allowed to continue, till it was made absolute by order dated 9th August, 2023. It is finally pleaded that this Court rightly set aside the



decision of the learned 3rd Additional District Judge, Bhubaneswar dated 29th July, 2024 in the FAO which unsettled the status quo directed over and in respect of the schedule property.

4. Heard Mr. Das, learned Senior Advocate and Mr. Pradhan, learned counsel appearing for the petitioner and Mr. Tripathy, learned counsel for opposite party No.2.

5. Mr. Das, learned Senior Advocate for the petitioner would submit that the petitioner seeking recall of the Court's order dated 13th March, 2025 is not maintainable in the eyes of law. The further submission is that in view of the decision of the learned court below on a premise that the order of status quo is of the year 2023 and it was too late to demand the same when the suit is of the year 2007 is factually incorrect and this Court considering the error apparent on the face of the record rightly intervened and set aside the judgment dated 29th July, 2024 in the FAO having regard to the fact that the suit for partition in C.S. No.713 of 2007 is awaiting disposal. Relying on a decision of the Apex Court in **Kunhayammed and others Vrs. State of Kerala and another (2000) 6 SCC 359**, Mr. Das, learned Senior Advocate would submit that notwithstanding dismissal of the SLP by the Apex Court filed by the State seeking restoration of the suit decreed ex parte in favour of opposite party No.2, the interest of the petitioner over the schedule property is not obliterated since rule of merger does not apply, a law which is reiterated therein. The contention is that irrespective of any such decree in favour of



opposite party No.2, the suit seeking relief of partition is perfectly maintainable and that apart, when the petitioner equally enure to the benefit out of the decree in T.S. No.108/704 of 2002/2000.

6. On the contrary, Mr. Tripathy, learned counsel for opposite party No.2 contends that the suit at the behest of the petitioner demanding partition in respect of the schedule property cannot stand in view of the decree in T.S. No.108/704 of 2002/2000. It is contended that an ex-parte decree was obtained vide Annexure-E dated 29th April, 2003 which was sought to be set aside by the State with an application filed under Order 9 Rule 13 read with Section 151 CPC but it was not entertained and dismissed by order dated 27th January, 2007 at Annexure-C to the I.A., whereafter, it was challenged in FAO No.09 of 2008 before this Court disposed of on 19th July, 2012 and dismissed as barred by limitation vide Annexure-D and ultimately, upheld with the dismissal of the SLP by order dated 24th February, 2014. So, the contention is that with the disposal of the SLP vide Annexure-E, opposite party No.2 being the rightful owner and in enjoyment of the schedule property uninterruptedly, no any claim can be raised over the same by the petitioner even with the institution of the suit in C.S. No.713 of 2007. Not only that, according to Mr. Tripathy, learned counsel, while exercising interest over the schedule property, the parties having the rights decided to partition it by metes and bounds and thus, filed the suit in C.S. No.7187 of 2014 which ended in a final decree leading to the initiation



of Execution Case No.21 of 2025 and under the above circumstances, any such status quo order cannot be justified and legally tenable and hence, therefore, this Court's order dated 13th March, 2025 while disposing of the writ petition is needed to be recalled and modified according to and in terms of the final decree in C.S. No.7187 of 2014.

7. As to the preliminary objection regarding maintainability of the I.A., as it has been raised by the petitioner, an order may be recalled if a proper hearing is needed when the matter is disposed of at the threshold without notice. Considering the plea of the petitioner based on an argument that the learned court below misjudged and revoked status quo on the premise that the interim order arrived only in 2023 when the suit is of the year 2007 and it was taken judicial notice of by this Court leading to the passing of the order dated 13th March, 2025 in the writ petition. But the I.A. is entertained for the reason that opposite party No.2 had not been noticed therein and the writ petition was disposed of at the stage of admission and further to confirm that the order is justified. It is against the aforesaid background that the I.A. has been entertained. Had there been a disposal on merit, the objection on maintainability of the I.A. could have been considered and hence, the Court is not inclined to accept the contention of Mr. Das, learned Senior Advocate for the petitioner and therefore, it stands rejected

8. On the rule of merger, the decision in **Kunhayammed** (supra), the Apex Court summed up the conclusions in the



following words, such as (i) when an order by a Court is reversed or modified or affirmed, such decision of the court under challenge merges with it and that decision of the superior court subsists, remains operative and is capable of enforcement under law; (ii) jurisdiction conferred under Article 136 of the Constitution of India deals with disposal of a leave to an appeal and its conversion into an appeal for a decision by the Apex Court; (iii) the doctrine of merger is not a decision of universal or unlimited application and it is to depend on the nature of jurisdiction exercised by the superior court and the content or subject matter of challenge laid or capable of being laid shall be determinative of its applicability; (iv) under Article 136 of the Constitution of India, the Apex Court may reverse, modify or affirm the decree or order appeal against while exercising its appellate jurisdiction and not while dealing with discretionary powers disposing of a special leave to appeal and there the doctrine of merger can be applied to the former and not to the latter; (v) an order refusing special leave to appeal may be a speaking one or otherwise and in either case, it does not attract the doctrine of merger as an order refusing special leave does not stand substituted in place of the order under question and all that it means, it was not inclined to exercise discretion so as to allow the appeal being filed; (vi) if the order refusing leave to appeal is a seeking order, then it has following implications, firstly, the statement of law contained in the order is a declaration of law by the Supreme Court within the meaning of Article 141 of the Constitution of India



and secondly, other than the declaration of law, whatever is stated in the order are the findings recorded by the Court, which would bind the parties thereto and also the Court, Tribunal or Authority in any proceedings on account of judicial discipline and propriety but it does not amount to claiming that the order of the Court below has stood merged in the order rejecting the special leave, for that, such an order is only binding the parties in subsequent proceedings. The above decision outlines the doctrine of merger and it is no more res integra that any such order in the SLP though binds the parties and the Court equally, it does not merge with the decision under challenge. Any such decision in an appeal upon leave granted by the Apex Court is the final order and there, the rule merger is applicable. The Court is alive to the legal position discussed hereinabove and in agreement with the contention of Mr. Das, learned Senior Advocate for the petitioner and therefore, it would not be incorrect to hold that the suit at the behest of the petitioner is not barred or for that matter, the right title and interest claimed over the schedule property by him and others with a demand seeking appropriate relief is still entertainable notwithstanding dismissal of the SLP, though, it may be a matter of debate and deliberation as to if partition in respect of the schedule property may be rightfully claimed. The Court is though in favour of the petitioner vis-à-vis maintainability of the suit but quite skeptical in view of the decree in T.S. No.108/704 of 2002/2000 without any further relief sought for questioning the legality thereof. As it is made to understand,



the decree is of the order 2003 and it was at the instance of opposite party No.2 that the suit in C.S. No.713 of 2007 was instituted in 2007 during the time when the application under Order 9 Rule 13 CPC was filed by the State in T.S. No.108/704 of 2002/2000 and disposed of by the Court of learned Adhoc Additional District Judge-cum-FTC(III), Bhubaneswar. It is also not understood why the petitioner instead of questioning the decree in T.S. No.108/704 of 2002/2000 maintained silence. Though, the suit has been instituted by the petitioner in 2007 as against the decree dated 29th April, 2003, it is only for partition of the schedule property without any declaration sought for or challenging such decree exclusively in favour of opposite party No.2. A copy of the plaint in C.S. No.713 of 2007 is at Annexure-1 to the writ petition and sole relief sought for therein is for a preliminary decree and allotment of shares in respect of the schedule property by a lawful partition. It may be questioned as to if the petitioner can demand partition of the property in dispute when the decree in T.S. No.108/704 of 2002/2000 is entirely in favour of one of the parties to the same. If the petitioner was deliberately not impleaded in that suit of opposite party No.2, after having acquired knowledge about the decree therein, it was for the former to demand appropriate reliefs besides partition in respect of the schedule property. Nevertheless, the petitioner demands a share in the property as against which opposite party No.2 has obtained a decree. Such a decree against the State in T.S. No.108/704 of 2002/2000 is with a declaration that opposite party No.2 has



acquired adverse title over the schedule property. Though, the State challenged the ex parte decree but it was unsuccessful all along till the dismissal of the SLP. With the discussion as aforesaid, no final opinion is offered by the Court and therefore, it is not to be misunderstood by any of the parties to the dispute. It is entirely left open for the petitioner to seek any such relief in the suit instituted on the anvil of the decree in favour of opposite party No.2 in T.S. No.108/704 of 2002/2000. At present, the Court is confined to the issue at hand raised by opposite party No.2 demanding recall of its order dated 13th March, 2025, whereby, status quo in respect of the schedule property has been directed. The relief sought for in C.S. No.713 of 2007 whether commensurate with the plea of the petitioner in juxtaposition to the decree in favour of opposite party No.2 declaring title in respect of the schedule property, it shall be gone into at the time of its disposal. At this juncture, the Court is only to consider whether the order dated 13th March, 2025 disposing of the writ petition is needed to be recalled.

9. In so far as, the interim order of status quo in the suit is concerned, the orders of the learned 1st Additional Civil Judge, Senior Judge, Bhubaneswar in I. A. No.558 of 2007 reveal that it was extended from time to time and ultimately, was made absolute vide Annexure-5 by order dated 9th August, 2023. So, therefore, the learned court below was completely wrong to hold that the order of status quo arrived suddenly in 2023. The interim order was continued to remain till the last when I.A. No.558 of 2007 was disposed of. So,



therefore, the conclusion of the learned Additional District Judge, Bhubaneswar in the FAO on any such premise that the petitioner maintained a stoic silence for nearly 16 years since the suit instituted and managed the status quo order recently in 2023 is factually incorrect. That apart, it would be too premature to determine the rights of the parties in C. S. No.713 of 2007 at the stage when the application under Order 39 Rules 1 and 2 CPC was dealt with and disposed of. Admittedly, there is a decree in favour of opposite party No.2 and it has been obtained against the State. The petitioner demands a share in the schedule property and has instituted the suit for partition. The genealogy is also questioned by the petitioner. It is altogether a different aspect whether any such relief for partition is the most preferred way demanding a share in the schedule property, when the decree in T.S. No.108/704 of 2002/2000 stares at the petitioner and others affected thereby. But it cannot be gainsaid that there is a dispute over the property in question demanding allotment of shares of course thereby admitting opposite party No.2 having interest therein. With the appropriate reliefs in the suit apart from partition, the Court finds that the final decree proceeding was concluded apparently within the knowledge of the petitioner.

10. Of course, a stranger may not be allowed to participate in a final decree proceeding except partition but in the instant case, the suit by opposite party No.2 was for a declaration of title by being in adverse possession over the suit property in hostile animus to the State and hence, would have



participated therein for having the claim of independent interest and demanded impletion or objected execution under Order 21 Rules 97 to 109 CPC. No doubt, the execution proceeding is underway in respect of the decree in T.S. No.108/704 of 2002/2000. Under the above circumstances whether the petitioner is a rightful claimant and has interest in the schedule property along with opposite party No.2 and could correctly demand a share therein is a question to be determined in C.S. No.713 of 2007 and therefore, the Court is to refrain itself to draw any conclusion either way which is likely to prejudice the parties to the same but to hold that the order dated 13th March, 2025 deserves to be recalled, the contention of Mr. Tripathy, learned counsel for opposite party No.2 is unacceptable simply for the reason that the learned court below lost sight of the fact that the status quo order was extended on and from 25th September, 2007 and was made absolute in 2023. In other words, the conclusion of the learned court below that the petitioner woke up out of slumber and managed the status quo order is an error apparent on the face of the record and therefore, this Court set it aside by order dated 13th March, 2025 and hence, in view of the above, no case is made out for recall of the same. But in view of the decree in T.S. No.108/704 of 2002/2000 and the same is pending execution, the petitioner could have raised objection therein even though the suit for partition has been instituted by him. Nevertheless, leaving it open for the parties to litigate in the suit in C.S No.713 to 2007, it is finally concluded by the Court that the order dated 13th



March, 2025 restoring the interim order while disposing of the writ petition even at the stage of admission needs no recall.

11. Accordingly, it is ordered.

12. In the result, the I.A. stands dismissed.

(R.K. Pattanaik)
Judge

Rojina