



A.F.R.

IN THE HIGH COURT OF ORISSA AT CUTTACK

R.S.A. No.221 of 2025

(In the matter of an appeal under Section 100 of the Code of Civil Procedure, 1908)

***Gokulananda Baishakh and
another*** ***Appellants***

-versus-

Surendra Patra and another ***Respondents***

Appeared in this case by Hybrid Arrangement

(Virtual/Physical Mode):

For Appellants - Mr. T. K. Mishra,
Advocate.

For Respondents - Mr. S. Mohapatra,
Advocate.

CORAM:

HON'BLE MR. JUSTICE A.C.BEHERA

Date of Hearing :28.01.2026 :: Date of Judgment :26.02.2026

A.C. Behera, J. This 2nd appeal has been preferred against the reversing judgment.

2. The appellants in this 2nd appeal were the defendants before the learned Trial Court in the suit vide C.S. No.532 of 2024 and respondents before the 1st Appellate Court in the 1st Appeal vide R.F.A. No.21 of 2025.

The respondents in this 2nd appeal were the plaintiffs before the learned Trial Court in the suit vide C.S. No.532 of 2024 and appellants



before the 1st Appellate Court in the 1st Appeal vide R.F.A. No.21 of 2025.

3. The suit of the plaintiffs (respondents in this 2nd appeal), vide C.S. No.532 of 2024 against the defendants (appellants in this 2nd appeal) was a suit for demarcation and permanent injunction.

4. As per the case of the plaintiffs, they (plaintiffs) are the owners of Schedule 'A' properties, the defendants are the owners of Schedule 'B' properties.

Schedule 'A' properties stands recorded in favour of the plaintiffs and Schedule 'B' properties stands recorded in favour of the defendants.

The properties in the Schedule 'A' & 'B' are different and separate plots in the R.o.Rs as well as in the village map.

The plot in Schedule 'A' and the plot in the Schedule 'B' are situated being adjacent to each other. At present, there is no sign of demarcating boundary line between Schedule 'A' properties of the plaintiffs and Schedule 'B' properties of the defendants.

So, taking the advantage of the absence of middle boundary between Schedule 'A' properties, the defendants tried to encroach the properties of the plaintiffs described in Schedule 'A' from its western portion in a north & south direction without any measurement, for which, the plaintiffs requested the defendants for demarcation of the middle



boundary line between the properties described in Schedule 'A' and Schedule 'B', but the defendants did not agree for the same, rather they (defendants) tried to encroach the lands of the plaintiffs described in Schedule 'A' forcibly.

For which, without getting any way, the plaintiffs approached the Civil Court by filing the suit vide C.S. No.532 of 2024 against the defendants praying for demarcation of boundary between Schedule 'A' and Schedule 'B' properties through Survey Knowing Civil Court Amin Commissioner and to injunct the defendants permanently from raising any pucca construction over their properties described in Schedule 'A' of the plaint and not to change the nature and character of the same in any manner before demarcation and to pass any other decree/relief in their favour, to which, they (plaintiffs) are entitled for.

5. Having been noticed from the learned Trial Court in the suit vide C.S. No.532 of 2024, the defendants contested the same by filing their joint written statement denying the above allegations alleged by the plaintiffs in their plaint against them (defendants) taking their stands inter alia therein *without disputing the ownership of the plaintiffs over the plots described in Schedule 'A' as well as their ownership i.e. the ownership of the defendants over the plots described in Schedule 'B' stating that,*

Their specific case was that,



“in the year 2014, their hamlet Parabil was declared as separate revenue village by the Settlement Authorities and Parabil was separated from village Dharina and new village map was prepared accordingly without changing the nature and character of the plots. Map was prepared during the 1987-88 consolidation operation.

In the year 2020-21, the Revenue Authority prepared new village map, wherein the plot numbers indicated in the previous village map of the year 1987-88 were changed. The defendant No.1 (Gokulananda Baishakha) filed an appeal under Section 12 of the OCH & PFL Act before the Deputy Director, Consolidation, Jagatsinghpur vide Appeal No.88 of 1998 against Krupasindhu Patra (father of the plaintiff No.1) for correction of the area of Plot No.2059 from the name of the father of the plaintiff No.1 to his name and as per order dated 29.04.1999 passed by the Deputy Director, Jagatsinghpur, direction was given for the reduction of area of Hal Plot No.2059 of the plaintiff No.1 from Ac.0.04 decimal to Ac.0.03 decimal and to include the said areas with the land of the defendants without any correction in the map. That order dated 29.04.1999 passed in Consolidation Appeal No.88 of 1998 has already been reached in its finality without being challenged. Accordingly, the area of Plot Nos.2059 under Khata No.101 of the plaintiffs described in Schedule ‘A’ was corrected and reduced from Ac.0.04 decimal to Ac.0.03 decimal.

Their further case was that,

“they (defendants) and plaintiffs have clearly separated their properties through proper demarcation and ear marking from each other since the year 1926-27 settlement. The area of the plaintiffs’ properties described in Schedule ‘A’ is less than the areas of the defendants described in Schedule ‘B’.

When the area of plot No.2059 Ac0.04 decimal of the plaintiffs has been reduced to Ac0.03 decimals by virtue of order dated



20.07.2020 passed in Misc. Case No.41 of 2020, then the plaintiffs have no right, title and interest over the lands of the defendants. So, the plaintiffs are not entitled to the relief claimed by them in the suit against them (defendants).

Therefore, the suit of the plaintiffs is liable to be dismissed.”

6. Basing upon the aforesaid pleadings and matters in controversies between the parties, altogether 6 (Six) numbers of issues were framed by the learned Trial Court in the suit vide C.S. No.532 of 2024 and the said issues are:-

ISSUES

- (i) *Whether the suit filed by the plaintiffs is maintainable in the eye of law?*
- (ii) *Whether the plaintiffs have any cause of action to file the suit?*
- (iii) *Whether the suit is barred by non-joinder and mis-joinder of necessary parties?*
- (iv) *Whether defendants have encroached the land of plaintiffs from its western portion of north-south boundary line, for which, the suit land needs to be demarcated?*
- (v) *Whether the decree of permanent injunction can be granted in favour of the plaintiffs against defendants over the suit land?*
- (vi) *To what other relief or reliefs, if any, the plaintiffs are entitled for?*

7. In order to substantiate the aforesaid relief(s) sought for by the plaintiffs in the suit vide C.S. No.532 of 2024 against the defendants, the plaintiffs examined three witnesses from their side including plaintiff No.2 as P.W.3 and exhibited series of documents on their behalf vide Exts.1 to 6.

On the contrary, in order to defeat/nullify the suit of the plaintiffs, the defendants examined three witnesses on their behalf including defendant No.1 as D.W.3 and relied upon series of documents from their side vide Exts.A to P.



8. After conclusion of hearing and on perusal of the materials, documents and evidence available in the record, the learned Trial Court answered all the issues in favour of the defendants and against the plaintiffs and basing upon the findings and observations made by the learned Trial Court in all the issues, the learned Trial Court dismissed the suit of the plaintiffs vide C.S. No.532 of 2024 on contest against the defendants as per its judgment and decree dated 24.01.2025 and 31.01.2025 respectively assigning the reasons that,

“when it is the admitted case of the plaintiffs that, they (plaintiffs) are the owners of Schedule ‘A’ properties and the defendants are the owners of Schedule ‘B’ properties and when the plaintiffs are in possession over Schedule ‘A’ properties and the defendants are in possession over Schedule ‘B’ properties and the properties described in Schedule ‘A’ of the plaintiffs is well demarcated with boundary in the village map, then under the said circumstances, the deputation of Civil Court Amin Commissioner to measure the Schedule ‘A’ properties is not required. For which, permanent injunction cannot be granted against the true owners of the properties. Therefore, the plaintiffs have no cause of action to file the suit and as such, the suit of the plaintiffs for demarcation and permanent injunction in the present form is not maintainable. So, the plaintiffs are not entitled to get any reliefs in the suit against the defendants.”

9. On being dissatisfied with the aforesaid judgment and decree of the dismissal of the suit of the plaintiffs passed by the learned Trial Court in



the suit vide C.S. No.532 of 2024, they (plaintiffs) challenged the same preferring the 1st appeal vide R.F.A. No.21 of 2025 being the appellants against the defendants arraying them (defendants) as respondents.

10. After hearing from both the sides, the learned 1st Appellate Court allowed that 1st Appeal vide R.F.A. No.21 of 2025 of the plaintiffs and set aside the judgment and decree passed by the learned Trial Court in the suit vide C.S. No.532 of 2024 as per its judgment and decree dated 02.04.2025 and 11.04.2025 respectively assigning the reasons that,

“When the mutated R.o.R. vide Ext.3 under Khata No.66 in Mouza Dharina (now Parabil) has been issued in respect of the suit Plot No.663 Ac.0.030 decimals, Plot No.664 Ac.0.050 decimals, Plot No.665 Ac.0.030 decimals in total Ac0.1100 decimals corresponding to Consolidation Khata No.101 Plot No.2057 Ac0.030 decimals, Plot No.2058 Ac.0.050 decimals and Plot No.2059 Ac0.040 decimals without changing the village map and the map is consonance with Record of Right vide Ext.3 and when the defendants have not challenged the said Record of Right and possession of the plaintiffs over Ac.0.1100 decimals land under suit Khata No.66 (Ext.3), for which, it is the considered view that, if the demarcation of the western boundary of the aforesaid three suit plots under Khata No.66 (Ext.3) will be made through the process of Court, the defendants will not be prejudiced, when defendants do not raise any claim over Ac.0.11 decimals of properties under Khata No.66 as per the R.o.R. vide Ext.3 described in Schedule ‘A’ of the plaint. So, the defendants have no right to interfere in the possession of the plaintiffs and their family members over the said land.



When the plaintiffs have sought for demarcation of the western boundary of the suit properties under Khata No.66 (Ext.3) Ac.0.11 decimals and for permanent injunction in respect of the same, then, at this juncture, the suit of the plaintiffs cannot be held as not maintainable even in absence of other co-sharers of the said properties. As such, the suit of the plaintiffs is not barred under OCH & PFL Act, 1972. So, the suit of the plaintiffs is maintainable and the plaintiffs have cause of action for filing the suit. Therefore, the plaintiffs are entitled to get the decree in respect of the reliefs sought for by them in the suit.”

11. On being aggrieved with the aforesaid judgment and decree dated 02.04.2025 and 11.04.2025 respectively passed by the learned 1st Appellate Court in R.F.A. No.21 of 2025 in favour of the plaintiffs and against the defendants, they (defendants) challenged the same preferring this 2nd appeal being the appellants against the plaintiffs arraying them (plaintiffs) as respondents.

12. This 2nd Appeal was admitted on formulation of the following substantial questions of law i.e.:-

(i) Whether the 1st Appellate Court was correct in ignoring the propositions of law that, the suit for demarcation and injunction simplicitor is hit by the provisions of Section 34 of the Specific Relief Act, 1963?

(ii) Whether the 1st Appellate Court was justified in ignoring the fact that, the suit for demarcation was bad for non-joinder of the boundary tenants, who are the necessary parties?



13. I have already heard from the learned counsel for the appellants (defendants) and learned counsel for the respondents (plaintiffs).

14. In order to have the just decision of this 2nd appeal, the aforesaid formulated substantial questions of law are required to be discussed and analyzed serially and chronologically one after another.

15. So far as the 1st substantial question of law i.e. *whether the 1st Appellate Court was correct in ignoring the proposition of law that, the suit for demarcation and injunction simplicitor is hit by the provisions of Section 34 of the Specific Relief Act, 1963* is concerned;

Here in this suit/appeal at hand,

“the plaintiffs have sought for the relief i.e. demarcation of western portion of north-south boundary line between the plots described in Schedule ‘A’ and Schedule ‘B’ of the plaint alleging boundary dispute between the plaintiffs and defendants stating specifically that, they (plaintiffs) are the owners and in possession over the properties described in Schedule ‘A’ and the defendants are the owners and in possession over the properties described in Schedule ‘B’.

As such, the dispute between the parties in the suit vide C.S. No.532 of 2024 is relating to the identification of western boundary of Schedule ‘A’ properties between two adjacent land owners i.e. plaintiffs and defendants. For which, the aforesaid dispute between the parties is civil nature.”

Therefore, it cannot at all be said that, the suit of the plaintiffs for demarcation is barred either expressly or impliedly under law.



On this aspect, the propositions of law has already been clarified by the Apex Court and Hon'ble Courts in the ratio of the following decisions:-

(i) In a case between ***E. Achuthan Nair Vrs. P. Narayanan Nair and another*** reported in ***(1987) 4 SCC 71*** that,

If the suit is of a civil nature, the Court will have jurisdiction to try the suit unless it is either expressly or impliedly barred. A dispute regarding identification of boundary between two adjacent land owners is certainly a dispute of a civil nature and it is not barred either expressly or impliedly.

(ii) In a case between ***Shreepat Vrs. Rajendra Prasad and Others*** reported in ***(2000) 6 (Supreme) 389*** that,

in case of a boundary dispute, demarcation is only solution.

(iii) In a case between ***Haryana Waqf Board Vrs. Shanti Sarup and others*** reported in ***(2008) 8 SCC 671*** that,

even in a suit for injunction, where there is a necessity for demarcation of land, an Advocate-Commissioner can be appointed.

(iv) In a case between ***G.L. Purusotham and Ors. Vrs. Y. Nagaraju and Ors.*** reported in ***2016 (1) CCC (AP) 3*** that,

When both parties are alleging encroachment on their respective properties, appointment of advocate commissioner with the assistance of Mandal Surveyor is proper.

(v) In a case between ***Rachakonda Nagaiah Vrs. The Government of Andhra Pradesh*** reported in ***2013 (3) Civ.C.C.107 (AP)*** that,

in case, there is any dispute regarding boundaries, to file an application seeking to have subject lands surveyed and demarcated.



16. Here in this matter at hand, when the plaintiffs have raised dispute regarding the identification of boundary between their properties described in Schedule 'A' and its adjacent properties of the defendants described in Schedule 'B', then at this juncture, in view of the principles of law enunciated in the ratio of the aforesaid decisions, it cannot be held that, the suit for demarcation filed by the plaintiffs vide C.S. No.532 of 2024 against the defendants is hit by the provisions of Section 34 of the Specific Relief Act, 1963.

For which, in other words, it is held that, the suit of the plaintiffs against the defendants for the relief i.e. demarcation is maintainable under law.

17. So far as *the relief relating to the permanent injunction sought for by the plaintiffs against the defendants in respect of the properties described in Schedule 'A' of the plaint under Khata No.66 vide Ext.3* is concerned;

It is the undisputed case of the parties that, they (plaintiffs) are the owners of the properties described in the Schedule 'A' and the defendants are the owners of the properties described in Schedule 'B'. When the plaintiffs have sought for permanent injunction against the defendants alleging that, the defendants are trying to enter upon their properties described in Schedule 'A', then at this juncture, the decree for permanent



injunction passed by the learned 1st Appellate Court against the defendants injuncting the defendants permanently from entering into the properties of the plaintiffs described in Schedule 'A' cannot be held as erroneous.

Because, undisputedly, the plaintiffs are the owners and in possession over the properties described in Schedule 'A', in which, the defendants have no interest.

On this aspect the propositions of law has already been clarified in the ratio of the following decisions:-

(i) In a case between ***Kundan Lal & anr. Vrs. Kamruddin & Anr.*** reported in ***2017 (1) CLR (SC) 256*** that,

the appellant was in possession and allotted different survey number and that he had no right to claim the suit property. He (appellant) was rightly injuncted.

(ii) In a case between ***Zarif Ahmad (D) through Lrs & another Vrs. Mohd. Farooq*** reported in ***2015 (2) CLR (SC) 1126*** that,

plaintiff establishing his possession over the Plot No.358 by oral and documentary evidence. Defendants are possessing plot vide Plot No.357.

Therefore, the Trial Court decreed the suit properly only in respect of the Plot No.358, in which, the plaintiff is the owner. So, the said decree is not illegal. (Paras 16 & 17)

(iii) In a case between ***A. Subramanian and Ors. Vrs. R. Pannerselvam*** reported in ***2021 (1) CCC 155 (SC)*** that,

the plaintiff has proved his right over the property as well as possession, he was entitled for decree of injunction.



So, by applying the propositions of law enunciated in the ratio of the above decisions to this suit/appeal at hand, it cannot be held that, the judgment and decree passed by the learned 1st Appellate Court injunctioning the defendants permanently from creating any sort of disturbance in the possession of the plaintiffs over their properties described in Schedule 'A' under Khata No.66 vide Ext.3 is erroneous.

18. So far as the 2nd substantial question of law i.e. *whether the 1st Appellate Court was justified in ignoring the fact that, the suit for demarcation was bad for non-joinder of the boundary tenants, who are the necessary parties* is concerned;

Undisputedly the matters in controversies between the parties in this suit/appeal at hand are for demarcation and permanent injunction. The said controversies are only between the parties to the suit/appeal at hand. For which, the presence or absence of the boundary tenants of the properties described in Schedule 'A' & 'B' cannot affect in any manner to the proper adjudication of the suit/appeal. For which, the suit vide C.S. No.532 of 2024 filed by the plaintiffs for demarcation and injunction is not bad for non-joinder of boundary tenants of the suit properties.

Therefore, the suit of the plaintiffs was not bad for non-joinder of any party.



19. As per the discussions and observations made above, when it is held that, the judgment and decree passed by the learned 1st Appellate Court in R.F.A. No.21 of 2025 setting aside the judgment and decree of the learned Trial Court passed in C.S. No.532 of 2024 decreeing the suit of the plaintiffs for demarcation and permanent injunction is not erroneous, then at this juncture, the question of interfering with the same through this 2nd appeal filed by the appellants (defendants) does not arise.

20. Therefore, there is no merit in this 2nd Appeal filed by the appellants (defendants). The same must fail.

21. In result, this 2nd appeal filed by the appellants (defendants) is dismissed on contest, but without cost.

The judgment and decree passed by the learned 1st Appellate Court in R.F.A. No.21 of 2025 is confirmed.

(A.C. Behera),
Judge.