

**A.F.R.**

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

**S.A. No.41 of 1993**

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

***Sanatan @ Sanei Das (since Dead) .... Appellants***  
***by his LRs and others***

*-versus-*

***Sananda Das and others .... Respondents***

Appeared in this case:-

***For Appellants*** : Mr. P.K. Mishra, N.C. Pati, A.K. Sahoo, S. Ratha, B.C. Panda and B. Das, Advocate

***For Respondents*** : Mr. A. Dash, Advocate

Appeared in this case:-

**CORAM:**  
**JUSTICE A.C. BEHERA**

**JUDGMENT**

**Date of hearing : 11.12.2023 / date of judgment : 29.01.2024**

***A.C. Behera, J.*** This 2<sup>nd</sup> appeal has been preferred against the confirming judgment.

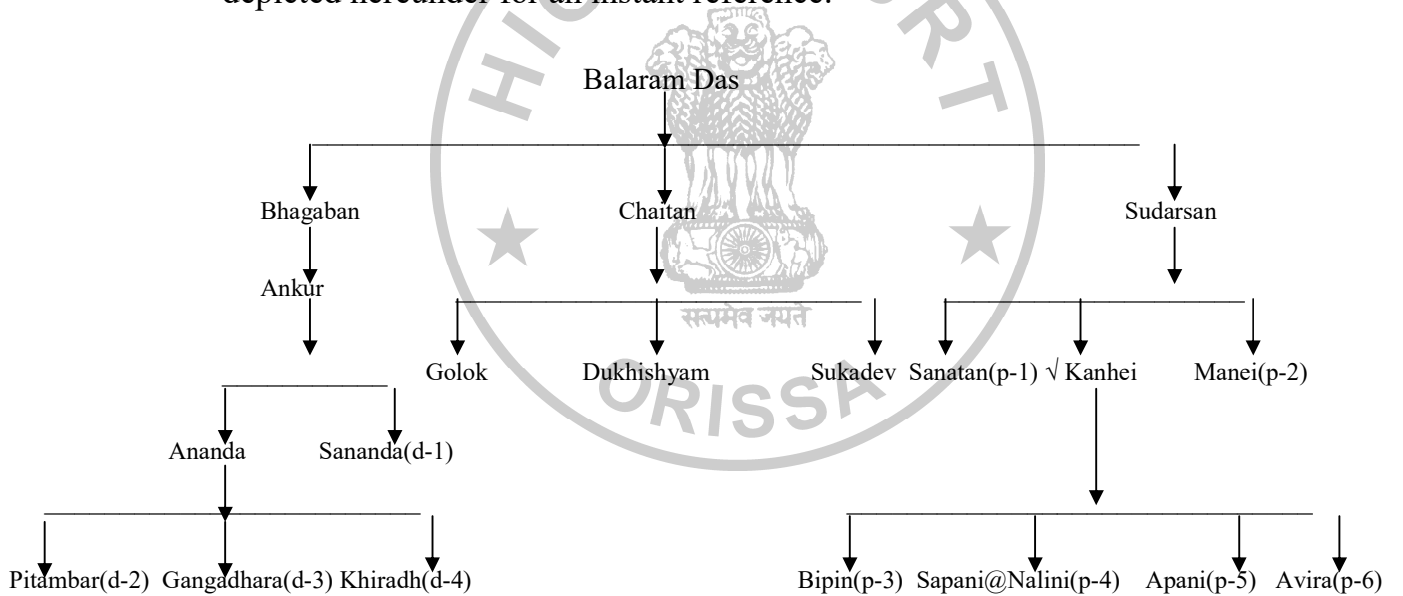
2. The appellants of this 2<sup>nd</sup> appeal were the plaintiffs before the trial court in the suit vide T.S. No.196 of 1989 and they were the appellants in the 1<sup>st</sup> appeal vide T.A. No.40 of 1990.

3. The respondents of this 2<sup>nd</sup> appeal were the defendants before the trial court in the suit vide T.S. No.196 of 1989 and they were the respondents in the 1<sup>st</sup> appeal vide T.A. No.40 of 1990.

The suit of the plaintiffs (those are the appellants in the 2<sup>nd</sup> appeal) vide T.S. No.196 of 1989 against the defendants was a suit for declaration and partition.

As per the averments made by the plaintiffs in their plaint, Baram Das was their common ancestor.

In order to have a better appreciation about the family pedigree of the plaintiffs, the genealogy of their family given in their plaint is depicted hereunder for an instant reference:-



4. According to the plaintiff, they(plaintiffs) belong to the branch of Sudarsan(who was the 3<sup>rd</sup> son of Baram Das). The defendants belong to the branch of Bhagaban (who was the 1<sup>st</sup> son of Baram Das). The 2<sup>nd</sup> son of Baram Das, i.e., Chaitan Das was separated through partition from his two brothers, i.e., Baram Das and Sudarsan Das just after the

Sabik settlement, for which, Bhagaban Das and Sudarsan Das along with their respective family members were staying jointly. After separation of Chaitan Das through partition from Bhagaban Das and Sudarsan Das, he (Chaitan Das) had no interest in the joint family of Bhagaban Das and Sudarsan Das and accordingly, Chaitan Das had lost his interest in the joint family of Bhagaban Das and Sudarsan Das.

5. As per the averments made by the plaintiffs in their plaint, the suit properties were originally under the Ex-intermediary Estate of Raja Burdhawan, popularly known as Kujang Estate, which was under Anabadi Khata and the same were full of bushy jungles. After the death of Bhagaban and Sudarsan, as per their above genealogy, their sons, i.e., Ankura, Sanatan, Kanhei and Manei reclaimed the suit properties in the year 1940 for the purpose of cultivation and cultivated the same. At that time, the son of Bhagaban Das, i.e., Ankur Das was the 'KARTA' of the family and he was managing the entire family of his branch and as well as the branch of Sudarsan. Subsequent thereto, i.e., in the year 1945, the Ex-intermediary leased out the suit properties in favour of Ankura Das, Sanatan Das, Kanhei Das and Manei Das, but that lease deed was executed by the Ex-intermediary only in the name of Ankura Das, as he was the managing member of the family. Though the lease in respect of the suit properties was only in the name of Ankura Das, but, Sanatan, Kanhei and Manei along with Ankura were possessing the same jointly, as the suit properties were their joint acquisition. So, before vesting of the Ex-intermediary Estate, the parties of both the sides were paying rent jointly in respect of the suit properties to the Ex-intermediary.

The plaintiffs are the members of the branch of Sudarsan. The defendants are the members of the branch of Bhagaban.

In the year 1950, the members of the above two branches, i.e. the members of plaintiffs branch and defendants branch were separated from each other and distributed their all joint properties including the suit properties as per their convenience without any metes and bound partition. In the last settlement, during yadast stage, through the records of the suit properties were prepared jointly in the name of plaintiffs and defendants, but, as Ankura Das was looking after the settlement operation, he (Ankura Das) had managed to record the suit properties in his name exclusively by gaining over the settlement authorities behind the back of the plaintiffs and without their knowledge. Ankura Das died in the year 1984 before the final publication of the settlement RoR of the suit properties leaving behind the defendants as his successors. So, the suit properties were illegally and erroneously recorded in the name of the defendants in the Hal Record of Rights.

6. In the month of April, 1989, when the plaintiffs requested the defendants for metes and bound partition of the suit properties, at that time, the defendants disclosed before the plaintiffs that, the suit properties have been recorded in the last settlement in their favour. So, without getting any way, they (plaintiffs) approached the Civil Court by filing the suit vide T.S. No.196 of 1989 against the defendants praying for declaration of the joint title of the plaintiffs and defendants over the suit properties and for partition of their half share from the suit properties and to declare the entry of the Hal RoR in respect of the suit properties in favour of the defendants as wrong along with the other reliefs, to which, they (Plaintiffs) are entitled for, as per law and equity.

All the defendants were set ex parte in the suit vide T.S. No.196 of 1989.

7. During the course of ex parte hearing of the suit, the son of the plaintiff no.1 was examined as P.W.1 on behalf of the plaintiffs and relied upon the documents vide Exts.1, 1/A and 2, i.e. rent receipts and the Hal RoR of the suit properties in support of the case of the plaintiffs.

8. After conclusion of hearing and on perusal of the materials, documents and evidence available in the record, the trial court dismissed the suit of the plaintiffs vide T.S. No.196 of 1989 on dated 08.05.1990 ex parte against the defendants by assigning the reasons that, as undisputedly, the Ex-intermediary had issued patta of the suit properties only in the name of the predecessor of the defendants, i.e., only in the name of Ankura Das and after abolition of the Ex-intermediary system, Ankura Das was paying rent in respect of the suit properties to the Government and as the Hal RoR of the suit properties has been prepared only in the name of the defendants and as it is the own evidence of P.W.1 on behalf of the plaintiffs that, the second son of Balaram Das, i.e., Chaitan separated in the year 1930, as per partition in their family, for which, it cannot be held that, the plaintiffs have any interest in the suit properties, because the Government had accepted Ankura Das as the tenant of the suit properties and after the death of Ankura Das, the suit properties have devolved upon his successors, i.e., upon the defendants, for which, the defendants are the owners of the suit properties and they(defendants) are in possession over the same, in which, the plaintiffs have no interest.

9. On being dissatisfied with the aforesaid ex parte dismissal of the suit of the plaintiffs vide T.S. Case No.196 of 1989 on 08.05.1990, they (plaintiffs) challenged the same by preferring the first appeal vide T.A. No.40 of 1990 being the appellants against the defendants by arraying them (defendants) as respondents.

10. After hearing from both the sides, the 1<sup>st</sup> appellate court dismissed to the said 1<sup>st</sup> appeal of the plaintiffs vide T.A. No.40 of 1990 as per its judgment and decree dated 04.11.1992 and 19.11.1992 respectively concurring / accepting the findings and observations made by the trial court in T.S. No.196 of 1989 against them (plaintiffs) / appellants.

11. On being aggrieved with the aforesaid judgment and decree of dismissal of the 1<sup>st</sup> appeal vide T.A. No.40 of 1990 passed on dated 04.11.1992 and 19.11.1992 respectively against the plaintiffs, they (plaintiffs) challenged the same by preferring this 2<sup>nd</sup> appeal being the appellants against the defendants by arraying them (defendants) as respondents.

12. This 2<sup>nd</sup> appeal was admitted on formulation of the following substantial questions of law, i.e.:-

(i) Whether the trial court and the 1<sup>st</sup> appellate court committed serious illegality in holding that, Ankura Das cannot be the 'KARTA' of the joint family in absence of any evidence that, some joint family property was available to constitute joint family?

(ii) when, the plaint assertions having not been denied and the evidence of P.W.1 having not been challenged, then, whether the trial court and the 1<sup>st</sup> appellate court should have held that, the presumptive value of the Hal RoR vide Ext.2 has been rebutted?

13. I have already heard from the learned counsel of the appellants/plaintiffs only, as none appeared from the side of the respondents/defendants to participate in the hearing.

14. The suit vide T.S. No.196 of 1989 of the plaintiffs was a suit for a declaration of title and partition.

The law on this aspect, about the duties of a plaintiff to get the decree of declaration of title in his/her favour in a suit has already been clarified by the Apex Court in the ratio of the following decision:-

*(1998) 9 SCC-719 : Ram Das vs. Salim Ahamed and another (para-4)—Specific Relief Act, 1963—Section 34—Declaration of title—* Plaintiff not entitled to get declaration title if such title could not be established by him by leading convincing evidence—because weakness in defendant's claim for title of the property, cannot establish plaintiff's title.

15. It is the own case of plaintiffs that, the suit properties were under Ex-intermediary Estate of Raja Bardhawan, popularly known as Kujang Estate. The said Ex-intermediary had issued patta in respect of the suit properties only in the name of the predecessor of the defendants, i.e. only in the name of Ankura Das.

16. It is also forthcoming from the documents filed on behalf of the plaintiffs vide Ext.1 and 1/A of the year 1965 and 1969 that, after the abolition of the Ex-intermediary system, the Government was accepting the rents of the suit properties only from Ankura Das admitting / accepting him (Ankura Das) as the only tenant thereof under the Government/State.

17. The Hal RoR vide Ext.2 relied upon by the plaintiffs is going to show that, the suit properties have been recorded in the name of the defendants as the successors of Ankura Das.

P.W.1 (son of the Plaintiff No.1) has deposed in his evidence by stating that, there was a partition in their family in the year 1930 and in such partition, the 2<sup>nd</sup> son of Balam Das, i.e., Chaitan Das was separated and thereafter in the year 1950 (which is before abolition of Ex-intermediary system), the members of his branch and the members of defendants were separated.

18. When, the patta of the suit properties was issued by the Ex-intermediary only in the name of the predecessor of the defendants, i.e., only in the name of Ankura Das and when after abolition of the Ex-intermediary system, i.e., after separation of the members of the branches of plaintiffs and defendants, the Government had accepted the rents of the suit properties only from Ankura Das as per Exts.1 and 1/A (rent receipts) and when during the Hal settlement operation, the suit properties have been recorded only in the name of the defendants, as the successors of Ankura Das, then at this juncture, it cannot be held that, the plaintiffs have joint title in suit properties with the defendants. For which, in other words, it is held that, the plaintiffs have no interest in the suit properties, but, only, the defendants are the owners thereof, for the reasons that, the acceptance of rents of the suit properties by the State Government directly from the predecessor of the defendants, i.e., from Ankura Das after the abolition of Ex-intermediary System is the creation of tenancy right of the predecessor of the defendants, i.e. Ankura Das in the suit properties.

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

- I. **2014(II) CLR-1217: Susanta Kumar Jena and another vs. Smt. Basanti Sethi and others(para-12)**—Tenancy—Creation of—Claim of lease of the suit properties by the Ex-intermediary in faovur of Kameswar—Kameswar was paying rent in respect of the suit property to the Government—Held tenancy has been created in favour of Kameswar even in absence of proof of the any original lease.
- II. **40(1974) CLT-888 : Jagannath Nanda vs. Bishnu Dalei and others**—Creation of agricultural tenancy—Held, under the tenancy laws, a formal document is not necessary to create agricultural tenancy and tenant could be inducted to an agricultural holding by mere acceptance of rent whereafter he would acquire the status of a tenant.



**III. 1992(II) OLR-529—D.B.—Monmohan Rout and others vs. State of Orissa and others—(Para-3 and 5)—O.E.A. Act, 1951—Section 8(1)**—Agriculture land—Lease by ex-intermediary—Name entered in Tenants' Ledger by Revenue Officer on the basis of Ekpadia and the rent has been accepted—No document and of lease is necessary for agricultural lease—Acceptance of rent creates tenancy right—Held consolidation authorities are to accept him as raiyat and to give respect to the decision of the authority under Section 8(1) of the O.E.A. Act.

**IV. 2004(II) OLR-528, Choudhury Balaram Dash vs. The Commissioner Consolidation, Orissa and others—(para 6 to 8) —O.E.A. Act, 1951—Sections 6 and 7**—Lands in dispute were part of an Intermediary Estate which vested with the State Government free from all encumbrances in consonance with the O.E.A. Act. After vesting, the lands have been settled in favour of the petitioner under the O.E.A. Act and the records of rights were prepared in his favour. That order not challenged by the O.P. and the same has attained finality. The order being a valid one, the Consolidation Authorities are bound by the said order.

19. Here in this suit is at hand, when the Ex-intermediary has issued patta of the suit properties only in the name of the predecessor of the defendants, i.e., only in the name of Ankura Das and when after the abolition of the Ex-intermediary system, the Government had accepted to the said Ankura Das as a tenant directly under the State/Government in respect of the suit properties by accepting the rents of the suit properties from him and when during the Hal settlement operation, the suit properties have been recorded only in the name of the defendants as the successors of Ankura Das and when as per the own evidence of the P.W.1, there was severance of status in their joint family through partition prior to the abolition of Ex-intermediary system and when in a suit for declaration of title like this suit at hand, it is obligatory on the part of the plaintiff to establish title over the suit properties by leading convincing evidence for the same and when as per the discussions and observations made above, the oral and documentary evidence adduced on behalf of the plaintiffs have not become sufficient to establish the title of

the plaintiffs over the suit properties, then at this juncture, by applying propositions of law enunciated by the Hon'ble Courts in the ratio of the aforesaid decisions, it cannot be held that, the suit properties were jointly acquired by Ankura Das along with the plaintiff Nos.1 and 2 and Kanhei Das during their jointness. Rather it is held that, the suit properties were the exclusive properties of Ankura Das and after his death, the suit properties have devolved upon his successors, i.e., upon the defendants and the defendants are the owners of the suit properties.

20. As per the discussions and observations made above, when the findings and observations made by the trial court and as well as 1<sup>st</sup> appellate court in dismissing the suit of the plaintiffs have become acceptable under law, then at this juncture, there is no justification under law for making interference with the said judgments and decrees of the trial court and as well as 1<sup>st</sup> appellate court through this 2<sup>nd</sup> appeal filed by the plaintiffs. For which, there is no merit in the 2<sup>nd</sup> appeal of the appellants (plaintiffs). The same must fail.

21. In the result, the 2<sup>nd</sup> appeal filed by the appellants is dismissed on contest, but, without cost.

22. The judgments and decrees passed by the trial court in T.S. No.196 of 1989 and by the 1<sup>st</sup> appellate court in T.A. No.40 of 1990 in dismissing the suit of the plaintiffs are confirmed.

**( A.C. Behera )**  
**Judge**

*Orissa High Court, Cuttack*  
*The 29<sup>th</sup> of January, 2024/ Jagabandhu, P.A.*

Signature Not Verified

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