CASE NO.:
Appeal (civil) 875 of 1998

PETITIONER:
CHRISTOPHER BARLA

RESPONDENT:
BASUDEV NAIK(D) BY LRS.

DATE OF JUDGMENT: 27/01/2005

BENCH:
B.P. SINGH & ARUN KUMAR

JUDGMENT:
J U D G M E N T

B.P.Singh,J.

This appeal by special leave is directed against the judgment and order of the High Court of Orissa at Cuttack dated October 22, 1992, in Second Appeal No.188 of 1981. The plaintiff is the appellant whose suit was decreed by the Subordinate Judge in Title Suit No. 2 of 1977 by judgment and decree of 27th September, 1979. The District Judge, Sundargarh, however, in Title Appeal No.23/79 dated 10th April, 1981 reversed the decision of the trial court and dismissed the suit. The Second Appeal appeal preferred by the plaintiff has been dismissed.

This appeal has been preferred by special leave.

The case of the appellant is that one Sanatan Kalo of Mouza Sundargarh had three sons namely, Kunu, Benudhar and Somnath. Sanatan Kalo as well as his sons are all dead. Kunu had three sons namely, Ratnakar, Raghunath and Pitambar, while Benudhar also had three sons namely, Sadasiv, Dhaneswar and Binod. The third son namely, Somnath had two sons namely, Kanhei and Purna. In the Mukherjee Settlement which took place prior to 1972 the plot in question was recorded in Khata No.12 of Mouza Sundargarh in the names of Kunu and Benudhar, sons of Sanatan Kalo and Kanhei and Purna, sons of the third son of Sanatan Kalo namely, Somnath. The land measured 33 decimals in plot No.824. This corresponds to Hal Plot No.61 measuring as 0.270 decimals in Khata No.371 of the Hal Settlement, which we are told took place after 1972. In the aforesaid settlement, the land in question was recorded jointly in the names of the sons of Kunu, Benudhar and Somnath.

The case of the plaintiff is that he purchased the lands from Sadasiv, Dhaneswar and Binod, sons of Benudhar by registered sale deed dated 12th January, 1972. It may here be noticed that Sanatan Kalo was the member of a scheduled tribe and the appellant was also a member of a scheduled tribe. According to the appellant, after the execution of the sale deed he came in possession of the suit plot and the same was fenced by him and he continued in enjoyment of the said plot. However, in the year 1976 the defendant claims to have purchased the land from Raghunath, one of the sons of Kunu under a registered sale deed dated 4th February, 1976. It is not disputed that the defendant is not a tribal and he obtained the property in question from a tribal with the prior permission of the competent authority under the relevant Regulation namely, Orissa Regulation No.2 of 1956. After obtaining the sale deed the defendant respondent is alleged to have forcibly evicted the appellant from the plot in question. This led the appellant to file a suit for recovery of possession on the basis of his title.

The parties led evidence before the learned Subordinate Judge who decreed the suit.

On appeal, the learned District Judge, Sundargarh set aside the aforesaid judgment and decre

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and dismissed the suit. The High Court in second appeal found that the question as to wheth er
the land in question fell to the share of Kunu or Benudhar, the sons of original holder Sans tan
Kalo being a pure question of fact, there was no reason for the High Court to set aside this

finding of fact which was based on evidence on record. The appellant has impugned the
aforesaid judgment and order of the High Court.

Learned counsel appearing on behalf of the appellant submitted that the High Court
itself noticed the fact that the onus had been wrongly placed on the plaintiff to prove his title,
and that the appellate court did not even look into the evidence led by the defendant. The
submission is that since both the parties had led evidence on the question as to whether in the
oral partition of the year 1941 the plot in question fell to the share of Kunu or Benudhar, the
appellate court ought to have looked into the evidence adduced by both the parties and it wa s not
justified in merely examining the evidence produced by the plaintiff and not the evidence
adduced by the defendant. Having noticed this fact the High Court initially thought that th e
matter may have to be remanded, but on further consideration the High Court wanted to be
satisfied as to whether there was any evidence adduced by the defendant, which if accepted,
would have supported the case of the plaintiff. The High Court, therefore, called upon the
counsel for the appellant to point out any particular evidence adduced by the defendant whic h
would necessitate the disturbance of the finding of fact recorded by the appellate court. T he
High Court has further noticed the insistence of the counsel for the appellant to consider the
reasoning given by the appellate court while rejecting the evidence led on behalf of the pla intiff.
However, the High Court was of the view that in second appeal it was not permissible for the

High Court to do so, unless the case fell within the one of those categories of cases where the
High Court may be justified in looking at the evidence afresh. The mere fact that on
appreciation of the evidence the appellate court came to record a finding from which it may be
possible to differ, was not a sufficient ground for interfering in second appeal.

Out of deference for counsel for the appellant who wanted us to look at the evidenc e
adduced by the defendant, we permitted him to place before us the material on record, includ ing
the evidence, which according to him was adduced by the defendant but supported the case of
the plaintiff. Having gone through the evidence shown to us, we are satisfied that the afor esaid
evidence does not in any manner support the case of the plaintiff-appellant. Admittedly, th e
partition of the year 1941 was not reduced to writing and, therefore, the courts had necessa rily to
depend on the oral evidence on record. The entries in the record of rights do not support t he
case either of the plaintiff or the defendant because in the Mukherjee Settlement, the lands are
recorded in the names of the two sons of the original owner namely, Sanatan Kalo, and two
grand-sons being the sons of the third son of the original owner. Neither the plaintiff nor the
defendant can derive any advantage from such an entry.

So far as Hal Settlement is concerned, the entry is in the names of the grand-sons o f
the original owner Sanatan Kalo. So far as the plaintiff-appellant is concerned, he has bee n
shown as being in unauthorised occupation of the plot in question. The fact that the appell

ant-
plaintiff was found to be in unauthorised possession is of no help to him, as it does not su
pport
his title to the plot in question.

Learned counsel then drew our attention to the provisions of the Orissa Regulation No.2 of 1956 particularly, to Regulation 7 and submitted that in any proceeding under the aforesaid Regulation if the transfer or relinquishment of immovable property is called in question, the burden of proof that such transfer or relinquishment was valid shall, notwithstanding anything contained in any other law for the time being in force, lies on th
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transferee. We fail to understand how Regulation 7(2) helps the case of the appellant-plain
tiff.
The aforesaid Regulation deals with transfer of immovable property within a scheduled area b
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a member of a scheduled tribe. Except in a case where the member of a scheduled tribe transfers land in favour of another member of a scheduled tribe, the previous consent in wri
ting
of the competent authority is necessary to give validity to such a transfer. The Regulation
provides the manner in which proceedings may be taken for setting aside such a transfer, and
the penalty that may be imposed in certain cases.

The instant case is not a case where the question of validity of a transfer is in is
sue.
In the instant case, the appellant-plaintiff claims to have purchased the property from one
of the
sons of Sanatan Kalo, namely, Benudhar, claiming that in the oral partition of 1941 this pl
ot fell
to the share of Benudhar. On the other hand, the defendants claim to have purchased the sam
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plot of land from Raghunath, son of Kunu, another son of Sanatan Kalo, claiming that the plo
t in
question fell to the share of Kunu in the partition of the year 1941. There could be no cha
llenge
to either of the transfers under Regulation 2 of 1956 because the transfer in favour of the plaintiff being a transfer in favour of a member of a scheduled tribe did not offend the sai
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Regulation, and the transfer in favour of the defendant was in accordance with the Regulatio
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since previous consent of the competent authority was obtained. The sole question, therefor
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which fell for consideration was whether in the partition of the year 1941 the plot in ques
tion fell
to the share of Kunu as claimed by the defendant, or to the share of Benudhar as claimed by
the
appellant. Such a question has necessarily to be decided on the basis of evidence on record
and,
therefore, the High Court was justified in holding that the finding of fact recorded by the
District
Judge namely, that the appellant had failed to prove that the plot in question fell to the s
hare of
Benudhar and, therefore, he derived no valid title from him, was a pure finding of fact base
d on
evidence on record which did not deserve interference in second appeal. We find no reason
to
take a different view.

This appeal is, therefore, dismissed. There will be no order as to costs.