

**IN THE COURT OF REVENUE DIVISIONAL COMMISSIONER,
SOUTHERN DIVISION, ODISHA, BERHAMPUR**

OGLS No.9/2018 and 10/2018

(Order by Sri T. Ao, I.A.S)

(Revenue Divisional Commissioner, (SD), Berhampur)

Decided On 17-05-2023

1. OGLS-9/18

Smt.Nituwant Kaur, W/o:Harjindra Singh
Village-Bhule Chak, Po- Tibhi Cant,
Ps- Gurdaspur, Dist- Gurdaspur,
State:Punjab

.....Petitioner

Versus

- (i) Gulbindar Singh, S/o Indrajit Singh
At:Bahadur Bagichapada
PO/PS- Bhawanipatna, Dist: Kalahandi.
(ii) Collector, Kalahandi
(iii) Tahasildar, Kalahandi, Dist- Kalahandi.

.....Opposite Party

2. OGLS-10/2018

Smt.Nituwant Kaur,W/o:Harjindra Singh
Village-Bhule Chak, Po- Tibhi Cant,
Ps- Gurdaspur, Dist- Gurdaspur,
State:Punjab

.....Petitioner

Versus

- (i) Abtar Singh, S/o Indrajit Singh
At:Bahadur Bagichapada
PO/PS- Bhawanipatna, Dist: Kalahandi.
(ii) Collector, Kalahandi
(iii) Tahasildar, Kalahandi, Dist- Kalahandi.

.....Opposite Party

For the Petitioners

.....Sri A.K.Mohapatra ,Advocate,

For the OP No.1

.....None



Prayer

These Appeal petitions are filed U/S-7 of OGLS Act,1962 to set aside orders of Collector, Kalahandi passed in Nazul land case No.672/2012 and 673/2012 of Kalahandi Tahasil jointly in favour of the LRs of late Indrajeet Singh. In these cases, the petitioners pray " to admit these Appeals, call for the lower court records and after hearing allow the appeal by setting aside the impugned Order passed in Settlement of Nazul land case No.672/2012 and 673/2012 in connection with extent of Ac.0.109 decimal land each covered under Plot No.3373/6577,3373/6576 and 3372 of Khata No.1058/1192 and Plot No.3373/6575 of Khata No.1058/1191 of Mouza Bhawanipatna and confirmed by the Collector, Kalahandi and direct the Tahasildar, Kalahandi to record the suit extent of lands in favour of the legal heirs of deceased Indrajeet Singh in the interest of justice.". The petitioner filed delay condonation petition U/S- 5 of Limitation Act wherein delay in receipt of Hal ROR has been cited as the reason for delayed filing of these Appeal Petitions.

Contention: -

Late Puran Singh (Paternal Grandfather of Petitioner as well as OP No.1) was the RT of Khata No.651 of Bhawanipatna Mouza consisting of Plot No.3772 with area of Ac.0.026 and Plot No.3773 with area of Ac.0.460 and constructed a residential house thereon. Late Puran Singh died leaving behind his two sons, namely Indrajit Singh (father of Petitioner as well as OP No.1) and Pritam Singh (Paternal Uncle of Petitioner and OP No.1). Pritam Singh got his share of Ac.0.218 which was recorded in his name. Indrajit Singh expired leaving behind two sons Abtar Singh, Gulbindar Singh and three daughters Bidwant Kaur, Satwant Kaur and Nitwant Kaur. In case No.9/2018, the OP No.1 Gulbindar Singh filed application for settlement of an extent of Ac.0.109 of Plot No.3373 of Khata No.651 of Bhawanipatna Mouza before Tahasildar, Kalahandi. In case No.10/2018, the OP No.1 Abtar Singh filed application for settlement of an extent of Ac.0.109 of Plot No.3372,3373/6576,3373/6577 of Khata No.651 of Bhawanipatna Mouza. Instead of settling area of Ac.0.218 of Plot No. 3372,3373,3373/6576,3373/6577 of Khata No.651 of Bhawanipatna Mouza jointly in the name of all LRs of late Indrajit Singh, the Tahasildar, Kalahandi passed order in Nazul land case No.672/2012 and 673/2012 to record Ac.0.109 each in the name of Abtar Singh, Gulbindar Singh. Hence the Petition to record Ac.0.218 of Hal Khata No.651 jointly in the names of all LRs of late Indrajit Singh.



Land Schedule (Case No. OGLS-9/18)

Mouza	Sabik Khata No.	Sabik plot No.	Hal Khata No.	Hal Plot No.	Area	Kissam
Bhawanipatna	651	3373	1458/1191	3373/6575	Ac.0.109	Bari pani

Land Schedule (Case No. OGLS-10/18)

Mouza	Sabik Khata No.	Sabik plot No.	Hal Khata No.	Hal Plot No.	Area	Kissam
Bhawanipatna	651	3372	1458/1192	3372	Ac.0.026	Ghara
		3373		3373/6576	Ac.0.012	Bari
				3373/6577	Ac.0.071	Bari

Documents relied upon: -

- Copy of ROR No.1458/1191.
- Copy of ROR No.1458/1192.
- Copy of LR certificate of late Indrajit Singh issued by Tahasildar, Kalahandi on 19.12.2016.
- Copy of Sabik ROR No.651.
- Case record of Settlement of Nazul case No.672/2012.
- Case record of Settlement of Nazul case No.673/2012.
- Copy of death certificate of Bachan Kaur, W/o: Late Indrajit Singh issued by Bhawanipatna Municipality.
- Field verification report submitted by Tahasildar, Kalahandi in OGLS Appeal case No.3858 Dt.29.09.2021.
- Field verification report submitted by Tahasildar, Kalahandi in OGLS Appeal case No.3859 Dt.29.09.2021.

Date wise briefing

1. On 09.09.2021, Advocate for the Petitioner was present in the Court. Tahasildar, Kalahandi attended the court online. Advocate for the Petitioner submitted that younger sister and brother of the Petitioner are staying at Bhawanipatna. Other sisters are staying outside. It was seen that field verification report of Tahasildar, Kalahandi is not received. Tahasildar, Kalahandi was directed to submit the same within a week.



2. On 23.11.2021, in spite of prior issue of notices, both the Petitioner as well as OPs were absent on call. Tahasildar, Kalahandi attended the court online. Tahasildar, Kalahandi intimated the court that the Nazul lands were settled in favour of OPs Abtar Singh and Gulbindar Singh in the year,2012. The Nazul lands were recorded in the name of OPs Abtar Singh and Gulbindar Singh as during field verification, their possession over the suit plots were established.
3. On 09.02.2022, Petitioner was present and established her identity vide Aadhaar No.446167571081. Petitioner intimated that the suit property was the property of late Indrajit Singh (father of Petitioner). Indrajit Singh expired leaving behind two sons Abtar Singh, Gulbindar Singh and three daughters Bidwant Kaur, Satwant Kaur and Nitwant Kaur. Bidwant Kaur and Abtar Singh expired and Satwant Kaur is residing in Punjab. In spite of prior issue of notices, OPs were absent on call.

ORDER

This case was taken up for hearing on 3.3.2022 on dual mode. As the cases were similar in nature, it was decided for joint hearing of both the cases and for issue of a common order. Petitioner was present online and stood on the contention of the revision petitions during hearing. In spite of prior issue of notices, OPs were absent on call. Petitioner intimated that in the suit plots, house has been made over Ac.0.015 and rest are lying vacant.

Field verification report submitted by Tahasildar, Kalahandi vide L. No.3858 Dt.29.09.2021 reveals that:

- Puran Singh was the recorded tenant of Khata No.651 with area of Ac.0.486.
- Puran Singh expired leaving behind two sons Indrajit Singh and Pritam Singh.
- Indrajit Singh died leaving behind two sons Abtar Singh and Gulbindar Singh and three daughters Bidwant Kaur, Satwant Kaur and Nitwant Kaur, out of which Abtar Singh and Bidwant Kaur died.
- Pritam Singh died leaving behind wife Balbindar Kaur, two sons, Baljit Singh and Gurjit Singh.
- Abtar Singh died leaving behind wife Talvindar Kaur, Son Jagdip Singh and daughter Simran Kaur.



- Out of total area of Ac.0.486, Ac.0.109 was settled in favour of Abtar Singh vide Nazul Settlement Case No.672/2012, Ac.0.109 was settled in favour of Gulbindar Singh vide Nazul Settlement Case No.673/2012 and Ac.0.218 in favour of Baljit Singh vide Nazul Settlement Case No.515/2011.
- After settlement of Ac.0.109 in favour of Gulbindar Singh, he sold away Ac.0.032 to Babita Agrawal and Sunita Agrawal, but the vendees are in possession of Ac.0.047.
- Khata No.651 consists Plot No.3372 with area of Ac.0.026 and Plot No.3373 with area of Ac.0.460.
- Out of Ac.0.460 of Plot No.3373, Ac.0.015 is in possession of family members of late Abtar Singh, Ac.0.057 is in possession of Gulbinder Singh, Ac.0.047 in possession of Babita Agrawal and Sunita Agrawal, Ac.0.100 is in possession of Baljit Singh, Ac.0.016 is in possession of Gurudwar and rest area of 0.225 is lying vacant.
- Ac.0.026 of Plot No.3372 is lying vacant.

Case record of Settlement of Nazul case No.672/2012 shows that:

- Application was submitted by Abtar Singh (Brother of Petitioner) for settlement of land of Ac.0.109 of Plot No.3772 and 3773 of Khata No.651 of Bhawanipatna Mouza in his name.
- In his enquiry report, RI submitted that the original RT of the suit land was Puran Singh (Paternal Grandfather of Petitioner). As per oral partition made in the family OP No.1 is in possession of area of Ac.0.026 of Plot No.3772, Ac.0.083 of Plot No.3773 prior to 26.02.2006. OP No.1 of OGLS 10/18, Abtar Singh has made house over area of Hc.0.012 of Plot No.3773. Ac.0.026 of Plot No.3772, Ac.0.071 of Plot No.3773 are lying vacant.

Case record of Settlement of Nazul case No.673/2012 shows that:

- Application was submitted by Gulbindar Singh (Brother of Petitioner) for settlement of land of Ac.0.109 of Plot No. 3773 of Khata No.651 of Bhawanipatna Mouza in his name.
- In his enquiry report, RI submitted that the original RT of the suit land was Puran Singh (Paternal Grandfather of Petitioner). As per oral partition made in the family OP No.1 is in possession of area of Ac.0.109 of Plot No.3773 prior to 26.02.2006. OP No.1 of OGLS 9/18, Gulbindar Singh has made house over the suit Plot No.3773.



Findings.

- Copy of Sabik ROR No.651 of Bhawanipatna Mouza shows that Plot No.3372 with area of Ac.0.026 and Plot No.3373 with area of Ac.0.460 stood recorded in the name of late Puran Singh (Paternal Grandfather of Petitioner).
- Copy of LR certificate of late Indrajit Singh issued by Tahasildar, Kalahandi on 19.12.2016 shows that Indrajit Singh died leaving behind Bidwant Kaur (Daughter), Abtar Singh (Son), Satwant Kaur (Daughter), Gulbindar Singh (Son), Nituwant Kaur (Daughter) as his legal heirs.
- Copy of death certificate of Indrajit Singh, S/o:Puran Singh issued by Bhawanipatna Municipality shows that Indrajit Singh died on 30.01.2015.
- Copy of death certificate of Bachan Kaur, W/o: Indrajit Singh issued by Bhawanipatna Municipality shows that Bachan Kaur died on 11.09.2015.
- Copy of ROR No.1458/1191 shows that Plot No.3373/6575 with area of Ac.0.109 was recorded in the name of Gulbindar Singh (Brother of Petitioner) out of which area of Ac.0.050 was transferred to Khata No.1458/1888.
- Copy of ROR No.1458/1888 shows that Plot No.3373/7336 with area of Ac.0.032 is recorded in the name of Babita Agrawal, W/o:Subash Agrawal, Sunita Agrawal, W/o: Anil Kumar Agrawal .
- Copy of ROR No.1458/1192 shows that Plot No.3373/6577,3373/6576 and 3372 with area of Ac.0.109 is recorded in the name of Abtar Singh (Brother of Petitioner).



- Case record of Settlement of Nazul case No.672/2012 and 673/2012 show that Abtar Singh and Gulbindar Singh were the applicants in those cases for settlement of Nazul land of Ac.0.109 each in their favour out of the Sabik Plot No.3372 and 3373 of Sabik Khata No.651 which stood recorded in the name of Puran Singh (Paternal Grandfather of Petitioner).Enquiry report of RI placed therein reveals that the late Indrajit Singh(father of Petitioner) had two sons namely Abtar Singh and Gulbindar Singh as his successors, but there is no mention regarding the daughters.
- As per proviso in Para-1(b) of Schedule-V of Notification No.5374 Dtd.11.02.2010,for an applicant for settlement of Nazul land in his favour the applicant including his lawful predecessor(s) in-interest, was in possession of such land for a period of last three years prior to the appointed date, i.e. the 26th February,2009; and has submitted or submits a valid application for such settlement within a period of six months from the date of publication of Odisha Government Land Settlement(Amendment) Rules,2010 or within such further period as may be appointed by a notification published in the official gazette from time to time, i.e. 17.02.2010 and the land has been used for homestead purpose.
- As per para-2 of Schedule-V of Revenue and D.M. Department Notification No.5374 Dtd.11.02.2010, the eligible persons shall submit application, in writing, in Form-1 along with attested true copies of all documents if any, in support of their claim to the Tahasildar concerned in whose area of jurisdiction, the land is situated.
- On verification of applications of Abtar Singh and Gulbindar Singh, it is seen that the applications were submitted on 17.02.2012. List of documents submitted in support of their claim for settlement, year from which the applicants are in possession and extent of land under their possession is not mentioned in the application and the related columns have been left vacant. Thus, the applications were incomplete.



- The genealogy of Puran Singh mentioned in the enquiry report of RI shows that the RI has not mentioned therein about the daughters of late Indrajit Singh.
- Field verification report submitted by Tahasildar, Kalahandi shows that out of Ac.0.460 of Plot No.3373, Ac.0.015 is in possession of family members of late Abtar Singh, Ac.0.057 is in possession of Gulbinder Singh, Ac.0.047 in possession of Babita Agrawal and Sunita Agrawal, Ac.0.100 is in possession of Baljit Singh, Ac.0.016 is in possession of Gurudwar and rest area of 0.225 is lying vacant and Plot No.3372 is also lying vacant.
- Copy of Judgement dtd.1.2.2018 of Hon'ble Supreme Court of India passed in Civil Appeal Nos.188-189 of 2018 of Danamma @Suman Surpur &ANR -vs- Amar & Others. Reveals that this case was filed by Danamma @Suman Surpur &ANR, D/o: Gurulingappa Savadi for partition of ancestral property among themselves and their brothers as per Hindu Succession Act, 2005. In the final observation, Hon'ble Supreme Court of India stated that the rights under the amendment are applicable to living daughters of living coparceners as on 9.9.2005 irrespective of when such daughters are born.

The order dtd. 12.03.2008 of Orissa High Court passed in first appeal case No. 159/2001 reveals that:

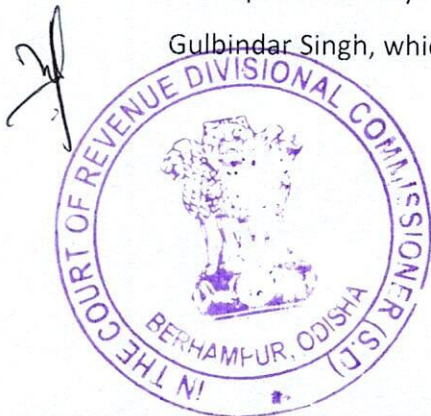
- This appeal was filed by Pravat Chandra Pattnaik and others vrs. Sarat Chandra Pattnaik against judgement dtd. 11.05.2001 and 03.07.2001 of learned Civil Judge (Senior Division), Baripada in Title Suit No. 189/1994.
- In this case, the subject matter relates to partition of paternal property between brothers and sisters of a joint family.
- In this case the Hon'ble Court observed that "The (Amendment) Act, 2005 was enacted to remove the discrimination as contained in Section 6 of the Hindu Succession Act, 1956 by giving equal rights and liabilities to the daughters in the Hindu Mitakshara Coparcenary property as the sons have. The said Act came into force with effect from 09.09.2005 and the statutory provisions create new right. The provisions are not expressly made retrospectively by the legislature."



- The Hon'ble Court disposed of the case with observation "Thus, looking into the substance of the provisions and on conjoint reading of Sub-Sections(1) and (5) of section 6 of the said Act are clear and defendant Nos.1,4 and 5 are entitled to have equal shares in the property as partition was not effected by 20.12.2004."

Taking the above facts into consideration, this court arrives at the conclusion that:

1. As per Legal heir certificate issued by Tahasildar, Kalahandi, Petitioner is the daughter of late Indrajit Singh and natural sister of both Abtar Singh and Gulbindar Singh.
2. Case Records of Nazul case No.672/2012 and 673/2012 show that the applicants Abtar Singh and Gulbindar Singh have not mentioned any thing about their sisters in their applications filed before Tahasildar, Kalahandi for settlement of the Nazul lands. The inquiry report of RI, Nazul, Bhawanipatna also indicates that late Indrajit Singh had two sons namely Abtar Singh and Gulbindar Singh as successors.
3. Further there is no indication in the case record regarding service of any notice on the Petitioner in these cases.
4. As per Hindu Succession (Amendment) Act, 2005, in a joint Hindu family governed by the Mitakshara law, the daughter of a coparcener shall by birth become a coparcener in her own right the same manner as the son and will be allotted the same share as a Son out of the ancestral property which is also supported by Judgement dtd.1.2.2018 of Hon'ble Supreme Court of India passed in Civil Appeal Nos.188-189 of 2018 of Danamma @Suman Surpur & ANR -Vs- Amar & Others and order dtd. 12.03.2008 of Orissa High Court passed in first appeal case No. 159/2001.
5. In the instant case Puran Singh (Paternal Grandfather of Petitioner as well as OP No.1) was the sabik RT of the suit lands. Initiation of Nazul case No.672/2012 and 673/2012 in the year, 2012 shows that the partition of the suit plots were not made in the name of LRs of late Indrajeet Singh (father of Petitioner as well as OP No.1) in both cases. Thus as per provision of Hindu Succession (Amendment) Act, 2005, Petitioner as well as her other sisters are entitled to get their share out of the paternal landed property. Further the report of RI says that late Indrajeet Singh had no legal heirs except Abtar Singh and Gulbindar Singh, which is proved to be incorrect.



Copy of service notice No.947 and No.937 dtd.28.02.2022 show that the notices were served on the OPs on 02.03.2022. In spite of prier issue and service of notices the OPs were absent on call. As such it is assumed that the OPs have nothing to submit in the matter.

This court arrives at the conclusion that proper procedure has not been followed in settlement of Nazul lands in Nazul case No.672/2012 and 673/2012. The applications in these cases and the enquiry report on the basis of which the orders were issued did not involve all necessary parties who should have been made a party in the whole process. The RI's report that Indrajit Singh had two Sons Abtar Singh and Gulbindar Singh as his successors is found to be incorrect as per Legal heir certificate issued by Tahasildar, Kalahandi. Field verification report of Tahasildar clearly indicates that Indrajit Singh died leaving behind two sons Abtar Singh and Gulbindar Singh and three daughters Bidwant Kaur, Satwant Kaur and Nituwant Kaur. As such this court sets aside the order passed in Nazul case No.672/2012 and 673/2012 and remits the same to Tahasildar, Kalahandi for de novo hearing in those cases involving all parties concerned including the present petitioner giving adequate opportunity to all concerned to reach at a logical conclusion. The entire matter be heard and disposed of within a period of two months from the date the Petitioner party makes a fresh application on the weight of this order.

This appeal petition is disposed of accordingly.




Revenue Divisional Commissioner,
Southern Division, Berhampur.