

Judge, Balangir in Title Suit No.85 of 1978 has been allowed and the judgment and decree impugned therein have been set aside.

The Appellant as the Plaintiff having obtained the decree in his favour before the Trial Court in getting declaration that he is the right, title and interest holder of the suit land as also a decree of permanent injunction, he has been non-suited by the judgment and decree passed by the First Appellate Court.

2. For the sake of convenience, in order to avoid confusion and bring in clarity, the parties hereinafter have been referred to, as they have been arraigned in the Trial Court.

3. Plaintiffs' case is that the suit properties appertaining to Plot Nos.1200 and 1201 under Holding No.109, Plot No.1199 are the ancestral properties as per the record of right of the year, 1916. The suit properties is allotted in the name of the grandfather of Khadia Padhan. Khadia died leaving behind his three sons namely, Sankirtan, Swapna and Bidyadhar and they jointly succeeded to the property of Khadia on his death. Plaintiff is the son of Bidyadhar. Sankirtan and Swapna died issueless while in joint mess and estate. So the Plaintiff became the owner of the suit property with his father and they remained in possession of the same. In the current settlement of the year, 1976, the suit land came to be recorded in the name of the father of the Plaintiff and thereafter, the Defendants having no manner of right, title and interest over the suit

initiated the proceeding vide Mutation Revenue Case No.08/264 of 1977, they subsequently withdrew. The however did not stop there and then they went on creating disturbance in the peaceful possession of the suit land by the Plaintiff. Therefore, the Plaintiff is driven to file the suit seeking necessary relief for declaration of right, title and interest over the suit property and permanent injunction restraining the Defendants from interfering with the peaceful possession of the suit property.

4. The Defendants in their written statement traversing the plaint averments have denied the properties in suit to be the ancestral property of the Plaintiff and that in the year 1916, it have been recorded in the name of his grandfather in the record of right. It is their case that the suit properties are their ancestral properties and in the record of the year 1936, the same stood recorded in the name of Nuna Padhan who succeeded to the same being the only heir and successor of Nila Padhan as his surviving daughter. It is stated that said Nila Padhan is their maternal grandfather. So, it is said that during Bhogra conversion, the name of Nuna Padhan @ Gadtya had been recorded in the demand list in respect of the suit land. The Defendants claim to be the legal heirs and successors of Nuna Padhan and thus to have inherited the properties and accordingly, they claim to be having the right, title and interest over the suit plots. It is said that Nuna died during the current settlement operation leaving behind the Defendants as her heirs and they continued to possess the suit land as

such and are paying land revenue. It is further stated that the suit plots correspond to sabik plot no.843 of the 1936 settlement. It is their case that the recording of the suit land in the name of the father of the Plaintiff in the record of right of the year 1976 is wholly erroneous created by manipulation; for which they had immediately filed a revenue case for change of the position in the record of right but they had to withdraw as it was later ascertained that Tahasildar had no jurisdiction and it has to be only so ordered by the Civil Court. It is said that when they were contemplating to file the suit, the Plaintiff came up with the suit.

5. On the above rival pleadings, the Trial Court framed as many as nine issues and has first proceeded to answer issue nos. 2, 3 and 4 altogether which practically has decided the fate of the suit as those deal with the competing claim of right, title, interest and possession over the suit land by the parties together in the backdrop of the rival case, whether the properties are the ancestral properties of the Plaintiff or that the Defendant had inherited the same from Nuna Padhan.

The Trial Court on analysis and examination of evidence, upon their evaluation have answered those in favour of the Plaintiff in saying that the suit land are the ancestral properties of the Plaintiff and thus he has the right, title, interest and possession over the same in categorically saying that the Defendants had not acquired title to the said property either on their own nor even by way of adverse possession.

6. The defendants having thus suffered from the judgment and decree passed by the Trial Court having carried the Appeal have further been successful in setting aside those judgment and decree passed by the Trial Court in favour of the Plaintiff at naught.

In order to judge the sustainability of the answer recorded by the Trial Court on those three issues, the First Appellate Court has gone through the evidence on record afresh and those appear to have been independently scanned at its level. Upon evaluation of evidence, the ultimate answer has been that the Plaintiff does not have the right, title, interest and possession over the suit land and the properties are not his ancestral properties as claimed. In view of such answer, the Plaintiff has been non-suited as not entitled to the reliefs claimed. Therefore, now the unsuccessful Plaintiff is the Appellant before this Court in this Second Appeal.

It may be stated at this stage, that Respondent Nos.1 and 2 (Defendant Nos.1 & 2) did not appear in this Appeal from the beginning and Respondent No.3 to 6 had entered appearance through their Counsel. The Respondent No.2 having died during pendency of the suit, since all his legal representatives are already on record, his name has been expunged as dead. The Respondent No.4 having died, his legal representatives have appeared. By common order passed in I.A. Nos.22, 23, and 24 of 2022, when it revealed from the record that all the

Defendants had jointly filed their written statement and contested the suit together before the Trial Court and had together filed the appeal before the First Appellate Court; here in this Appeal of the year 1991 arising from the suit of the year 1978 in presence of the learned Counsel for the Respondent Nos.3, 5 and 6 taking a view that substantial representation is there, hearing of this Appeal has been taken up without further bringing those legal representatives of Respondent No.4 on record.

7. By order dated 07.04.1992, the present Appeal has been admitted on the following substantial questions of law as find mention in ground Nos. A and C of the Memorandum of Appeal. Those run as under:-

(A) For that the disputed lands have stood recorded in Plot No.577 of 1976 settlement in the name of the grandfather of the Plaintiff and in plot no.843 of 1936 settlement in the name of the mother of the Defendants and in the 1976 settlement it stood recorded in Plot Nos. 1200 and 1201 in the name of the father of the Plaintiff and in Plot No.1199 with a small area of 16 decimals in the name of the mother of the Defendants, as found by the survey knowing Commissioner. The Defendants have also not pleaded or stated as to how their mother acquired the land or how it got recorded in her name in the 1936 settlement and their plea that it had been recorded in the name of their grandfather in 1916 is not proved. The Plaintiff's case being that the land is his ancestral property and there being no infirmity in the report and evidence of the Commissioner and undisputedly the demand slip in the bhogra proceeding having been prepared only on the basis of the 1936 settlement entry whether the Defendants have right, title to the property?

(C) That the Trial Court believed the oral evidence of P.W.2, who is an adjoining land owner regarding the possession of the Plaintiff. The lower Appellate Court disbelieved the same only on the sole ground that P.W.2 has stated that his lands adjoin to the West of the suit land whereas the Plot No.1199 adjoins to

the West of Plot No.1200 and 1201 of the 1976 settlement as per the village map. In view of the fact that Plot No.1199 is also a part of the suit land, whether the lower Appellate Court has not committed error in disbelieving the evidence of P.W.2?

8. Since the above substantial questions of law concern with the findings of the Courts below on issue nos. 2, 3 and 4 which relate to the competing claim of right, title and interest of the parties over the suit land with the respective history that they have narrated and as all those issues have been taken up together for decision by the Courts below; the same course is felt as apt and proper to be adopted here in this Appeal to answer the substantial questions of law in addressing the rival submissions advanced.

The claim of right, title and interest over the suit property by the Plaintiff is based on the entry of 1916 settlement. The Defendant relates the history as to the chain of title from the year, 1936 by saying that in the record of right of the year, 1936, the land in suit stood recorded in the name of their mother Nuna Gadtya. The plaintiff is silent as to the holding number or the plot number of the suit land as per the record of 1916 settlement. The Defendants however assert that the suit plot corresponds to Plot No.843 of holding No.29 of the record of right of 1936 settlement. The Plaintiff in order to establish the nexus relies on the report of the Survey Knowing Commissioner i.e. Ext.V as also his evidence as C.S. No.1. The report shows that the current settlement Plot No.1200

corresponds to land measuring 1.03 Acres as of Plot No.577. when the total extent of land under Plot No.1200 extends to 1.25 Acres. It is further indicated in the report that Plot No.1201 comprises of 11 decimals and Plot No.1199 contains 16 decimals from out of land under Plot No.577 which are however of the extent of Ac.0.16 and Ac.0.19 decimals respectively. Since the report does not narrate as to which other plots also the said three plots relate and when it reflects that an extent of Ac.1.21 decimals of Plot No.1200, Ac.0.09 decimals of Plot No.1201 and 17 decimals of Plot No.1199 relate to Plot No.481 and Plot No.842; the First Appellate Court has taken the view that the report of the Commissioner thus reveal that almost the entire Plot No.1199, 1200 and 1201 correspond to Plot No.843. The record of right of 1936 settlement, Ext.B when shows that Plot No.841, 842 and 843 stood recorded in the name of Nuna Gadtya, the view has been taken that the plaintiff has not placed in his pleading nor proved that the entries of 1936 settlement record relate to the suit plot. This Court having perused the pleadings and having gone through the evidence of P.W.1 as well as C.W. 1 finds no such reason to express disagreement with the said view taken by the First Appellate Court.

The oral evidence of P.W.1 and P.W.2 being examined, the First Appellate Court has held the view taken by the Trial Court that the

evidence of P.W.2 is more credible than the evidence adduced by D.W.1 and D.W. 2 has been negated. The plaintiff, P.W.1 has stated that P.W.2 is having his land to the west of all the three plots, which has been so stated by P.W.2. The Trial Court has therefore placed much reliance of this P.W.2 in saying that it has provided corroboration to the evidence of P.W.1 finding the P.W.2 to be the adjoining land owner in physical possession and thus his knowledge to be direct. The First Appellate Court on carefully verification of the village map, Ext.IV and IV/a, upon an enquiry has found that the suit Plot No.1199 adjoins to the west of both the plots 1200 and 1201 and that plot 1201 is small strip of land on the south of Plot No.1200. Therefore, when it has been stated that the evidence of P.W.1 and that of P.W.2 to the effect that land of P.W.2 touches on the west of all the plots is wrong, this Court finds no such reason to differ with the same. The First Appellate Court then having gone to further examine that P.W.1 who has made a statement that he cannot give the area of their other plots with reference to Khata number and how those have been recorded in different settlement records has arrived at a conclusion that he is having no knowledge of his lands. With such evidence available from the side of the Plaintiff, the First Appellate Court has also the oral evidence let in from the side of Defendant to be not of clinching in nature in support of their case. Therefore, the course adopted by the First Appellate Court is held to be in order, when it has

said that the documentary evidence therefore have to be given maximum importance for deciding issues. The entry in the record of right of 1916 settlement, in the absence of the pleading showing that Plot No.577 of 1936 settlement is the suit land has been refused to be given that importance.

The First Appellate Court in my view has rightly differed with the Trial Court in saying that when the revenue record of the year, 1950 shows that Nuna Gadtya was the recorded tenant, the same cannot be said to be the entry as merely consequential to the entry made in the record of right of the year 1936 especially 14 years have passed in between. The rent receipts, Ext.E series proved from the side of the Defendants provide definite support to their case that pursuant to the revenue entry, they being in possession are paying the rent. When this is the position, the record of right of the year 1976 in favour of the Plaintiff under challenge and had been sought to be corrected by the Defendant on an earlier move, the First Appellate Court is absolutely right in accepting the settlement entry in respect of the land of the year, 1936 coupled with that of demand register of Bhogra conversion proceeding, series of rent receipts in holding that the plaintiff has failed to prove his case in establishing right, title, interest and possession over the suit land so as to be entitled to the reliefs claimed. In that view of the matter, it is held that the judgment and decree passed

by the First Appellate Court by setting aside the judgment and decree passed by the Trial Court do not fall within the scope of interference. Accordingly, the substantial questions of law receive their answers against the claim and case of the Plaintiff

9. In the result, the Appeal stands dismissed. There shall however be no order as to cost.

*(D. Dash),
Judge.*

Narayan

