

IN THE HIGH COURT OF ORISSA AT CUTTACK

SA No.168 of 1988

In the matter of an appeal under section 100 of the Code of Civil Procedure assailing the judgment and decree dated 30.03.1988 and 15.04.1988 respectively passed by the learned 2nd Additional District Judge, Ganjam, Berhampur in Title Appeal No.29/87 (T.A. No.60/86 GDC) setting aside the judgment and decree dated 07.07.1986 and 15.07.1986 respectively passed by the learned Sub-Judge, Aska in Title Suit No.81 of 1983.

Sagi Sanyasi Raju

....

Appellant

-versus-

Rabinarayan Sahoo & Others

....

Respondents

Appeared in this case by Hybrid Arrangement
(Virtual/Physical Mode):

For Appellant - Mr.N.C. Pati, Advocate

For Respondents - Mr.P. Mohanty, Advocate

CORAM:

MR. JUSTICE D.DASH

Date of Hearing : 21.04.2022 :: Date of Judgment:09.05.2022

The Appellant, by filing this Appeal under Section- 100 of the Code of Civil Procedure (for short, 'the Code') has assailed the judgment and decree dated 30.03.1988 and 15.04.1988 passed by the learned 2nd Additional District Judge, Berhampur in Title Appeal No.29 of 1987 (T.A. No.60 of 1986 GDC).

By the same, the Appeal filed by the Respondents under Section- 96 of the Code has been allowed and the judgment and decree dated 07.07.1986 and 15.07.1986 respectively passed by the learned Sub-Judge, Aska in Title Suit No.81 of 1983 have been set aside.

The Present Appellant, being the Plaintiff, had filed the suit for declaration that the tope situated on the suit land is his half share which had been allotted to him in the partition between him and his brother, the Respondent No.1 (Defendant No.1) seeking further declaration that the Respondent No.2 (Defendant No.2) has no interest on the aforesaid property and for permanent injunction. The suit having been decreed, the Respondents (Defendants) having suffered from the same, having filed the Appeal, the Appellant (Plaintiff) has been non-suited as per the decision of the First Appellate Court.

It may be stated here that Respondents 1 and 2 (Defendants 1 and 2) having died during pendency of this appeal, their names have been deleted in the cause title as they have left no other legal representatives other than the rest of the Respondents. The Defendant No.4 being dead, his legal representatives have come on record.

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 Suit. सत्यमेव जयते

3. One S. Rajib Raju is the father of Plaintiff and Defendant No.1. The Defendant No.2 is the wife of Defendant No.1 whereas the Defendants 3 and 4 are his sons. Sister of the Plaintiff and Defendant No.1 is Defendant No.5. Said Rajib had a brother, namely, S. Narasingh Raju, who is elder to him. Sibaram Raju is the son of S. Narasingh Raju. It is stated that Sibaram, Sanyasi (Plaintiff) and Satyanarayan (Defendant No.1) partitioned their properties way back in the year 1955 under the registered deed of partition. However, the Plaintiff and Defendant No.1 continued to live jointly with their properties while family of Rajib and Narasingh lived jointly. The Defendant No.1 was

carrying on tobacco business and was handling the same independently. In the said business, he sustained heavy loss and owed huge money to be paid to the merchants. The Defendant No.1 then suggested that their family properties be so kept beyond the reach of the creditors. For this purpose, they too executed nominal deeds of transfer of their properties, which they obtained in the partition in favour of their mother and sister and the Defendant No.2, who is the wife of Defendant No.1. It is the case of the Plaintiff that all most all the properties except Ac.12.00 decimals of land located in Village-Dhaumal was kept nominally in the names of other members of the family. The two brothers, however, continued to be in joint possession and enjoyment of all the properties that fell to their share and properties nominally sanding in the names of Defendants 2, 5 and their mother. The Plaintiff and Defendant No.1 sold Ac.12.00 decimals of land on 01.08.1955 to discharge the part of their loan. They raised a tope on the land, which had been nominally transferred to the Defendant No.2. Be that as it may, with the income from the land, the Defendant No.1 discharged the loan dues, the outstanding dues of the loan taken by the Defendant No.1 stood reduced to nil by the year 1963. So, in that year 1963, the mother of the Plaintiff and Defendant No.1 executed a sale deed in favour of the Plaintiff and Defendant No.1 in respect of Ac.22.62 decimals of land out of Ac.26.00 decimals of land and some odd nominally transferred in her favour, but she retained about more than three acres of land and it was with the purpose that after her death, two sons and daughter would enjoy the same. A misunderstanding amongst the members of the family arose in that very year 1963 and that led them to live separately. In the partition between the Plaintiff and Defendant No.1, Defendant No.1 got 12 cubits of a thatched house located in Brahmin street and a house site in Kandha

Sahi, which are of equal value. All the lands were divided equally between two brothers and those includes the tope that had been raised on the lands which two had nominally transferred in favour of Defendant No.2. The tope was raised on the land measuring around Ac.9.00 decimals and that had been nominally transferred to Defendant No.2. The tope was then divided into two parts between the Plaintiff and Defendant No.1 but on that score they had not executed any deed of partition. After this partition, the Defendant No.1 moved from place to place and sold away all his movables which had fallen in his share. Due to non-maintenance of the house of Defendant No.1, it ultimately stood as a house site, but the Plaintiff improved his building and constructed a pucca house beyond the thatched house. The Defendant No.1 engaged servants for his lands and tope, but the Plaintiff was personally supervising and maintaining his landed properties. He was paying cist for his land as also cist on behalf of Defendant No.1 for his lands out of the income of Defendant No.1. But when Defendant No.3 became major, he joined with the rowdies. The tope wherein mango trees and cashewnut plants had been grown up jointly by the Plaintiff and Defendant No.1 and was being enjoyed by them on 50:50 basis was obstructed by Defendant No.3 as it was in the name of his mother by that nominal sale deed executed by Defendant No.1. The Defendant No.3 then asserted that the entire tope belongs to his mother and he gave out that he would not allow the Plaintiff to any benefit whatsoever therefrom. So, the suit came to be filed.

4. The Defendants 1 to 4 filed a joint written statement. While traversing the plaint averments, they had denied the allegations that the Defendant No.1 sustained heavy loss and was in debt. They have also denied the allegations that the sale deeds including the one in favour of

Defendants 2 and 5 were nominal. It is their case that the transfer effected in and around the year 1955 is genuine and proper and thereby the title has passed to the concerned vendee. The factum of partition has been denied and it is said that the properties are still joint. The Defendant No.2 claims to have acquired the right, title and interest over the entire nine acres of land that had been transferred to her and that she had purchased from her own funds. It is further admitted that the mother Tariniamma gifted 22 acres of land from out of 26 acres of land to the Plaintiff and Defendant No.1, which are nominal and, therefore, the Plaintiff has got his right, title and interest over the tope, which is the subject matter of the suit and that as per the partition effected in the year 1963.

5. The Trial Court has answered that the tope on the land which is the subject matter of the suit was in the share allotted to Plaintiff in the partition and was in the sale in favour of Defendant No.2 is nominal. The suit being decreed, the Defendants 1 to 4 having preferred the Appeal, the First Appellate Court has rendered the finding to the contrary and the Plaintiff has been non-suited.

6. At this stage, before going to state the substantial questions of law required to be answered and proceed further to answer the same; I have carefully gone through the records.

It reveals on perusal of the record that the Defendant No.1 and Defendant No.2 having died during pendency of this Appeal, by order dated 12.08.2004; their names have been deleted as dead and thereafter the Defendant No.4 having died; his legal representatives had come on record being substituted as Respondent No.4(a) and 4(b), i.e., Defendant No.4(a) and 4(b).

Now, a Memo being filed from the side of the Plaintiff (Appellant); it has been stated therein that the Defendant No.3 (Respondent No.3) has also died 6 years back and has left behind no legal representatives. It has further been stated that the Defendant No.4(a) and 4(b) too have died about five years back and they too have left no such legal representatives for bring brought on record on being substituted. The Memo is supported by an affidavit of the Plaintiff (Appellant). It is also not stated that these Defendants (Respondents) either individually or jointly have further created any interest over the subject matter of the suit in favour of any others and in that direction, no such step as known to law has also been taken.

In the above state of affair and situation as to the parties as stated by the Plaintiff (Appellant), it is seen that this Court is no more required to proceed further in this Appeal for its disposal on merit by answering the substantial questions of law.

Accordingly, the Appeal stands dismissed. No order as to cost.

(D. Dash),
Judge.

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