

IN THE HIGH COURT OF ORISSA AT CUTTACK

Second Appeal No.32 of 1988

In the matter of an Appeal under Section 100 of the Code of Civil Procedure assailing the judgment and decree 16.11.1987 and 23.11.1987 respectively passed by the learned Subordinate Judge, Parlakhemundi in T.A. No.4 of 1983 confirming the judgment and decree dated 15.04.1983 and 28.04.1983 respectively passed by the learned Additional Munsif, R. Udayagiri in T.S. No.1 of 1979.

Anutapo Bordhan (Since Dead & Deleted) and Others ***Appellants***

-versus-

Srimati Gunabathi Dalai (Since Dead & Deleted) and Others ***Respondents***

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

For Appellants - Mr.S.K.Padhi
(Senior Advocate)

For Respondents - Mr.P.K.Parida
(Advocate)

**CORAM:
JUSTICE D.DASH**

Date of Hearing : 14.12.2022 : Date of Judgment:23.12.2022

D.Dash,J. The Appellants, in this Appeal under Section 100 of the Code of Civil Procedure, 1908 (for short, 'the Code'), have assailed the judgment and decree 16.11.1987 and 23.11.1987 respectively passed by the learned Subordinate Judge, Parlakhemundi in T.A. No.4 of 1983.

By the same, the judgment and decree dated 15.04.1983 and 28.04.1983 respectively passed by the learned Additional Munsif, R. Udayagiri in T.S. No.1 of 1979 have been confirmed.

The Appellants (Plaintiffs) having been non-suited by the Trial Court, they have also failed in the First Appeal preferred by them.

It be stated here that during pendency of the First Appeal, Ganaik Srihari Bardhano (Plaintiff No.1 in the suit), having been dead, his legal representatives are on record on being substituted.

Similarly, the Appellant No.3 and Respondent No.6, having been died during pendency of this Appeal, their legal representatives are also on record being substituted.

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. The Plaintiff had filed T.S. No.27 of 1967 in the Court of the learned Munsif, Paralakhemundi stating that they are the owners in possession of 15 Kitis measuring 5 acres of lands, which are Ambo Billo, Baniki Billo, Matia Billo and Bodia Billo by virtue of their purchase under registered sale deed dated 8.11.1956 for a consideration of Rs.1000/- from the Defendants. The Plaintiffs had prayed for recovery of possession of those lands stating that the Defendants are in forcible occupation of Matia Billo. During pendency of that suit, as the Defendants tried to grab, some more lands from Ambo Billo, Baniki Billo, on police requisition, a proceeding under section 145 of the Code of Criminal Procedure was initiated by the Executive Magistrate. By order dated 06.11.1970 passed in Misc. Case No.92 of 1967, the Executive Magistrate declared the Defendants to be in possession of the same. The Plaintiffs, therefore, filed the suit, i.e., T.S. No.103 of 1970 of setting aside that order passed in the proceeding under section 145

Cr.P.C. and declare their right, title and interest. That suit was decreed declaring that the Plaintiffs therein are the owners in possession of the suit land. Against that order, an Appeal being filed vide T.A. No.13 of 1971, the learned Sub-Judge reversed the finding of the Trial court and held that the Plaintiffs were not in possession of the suit land. Against that order, Second Appeal was filed before this Court vide S.a. No.358 of 1971. This Court then upheld the finding of the First Appellate Court.

When the present suit came up for hearing, an application was filed that the suit is not maintainable and barred by res judicata as in T.S. No.27 of 1967, the matter has already been decided. Finally, it having been ordered that the suit is barred by the principles of judicata; an Appeal was preferred and that having been dismissed, hence, the present Appeal is at the instance of the Plaintiffs.

4. This Appeal has been admitted to answer the following substantial question of law:-

“Whether the Courts below are justified in coming to the conclusion that the present suit is barred by the principles of res judicata.”

5. I have heard learned Senior Counsel for the Appellants and learned counsel for the Respondents. I have also carefully read the judgments passed by the Courts below.

6. The suit has been decided on a preliminary issue in holding that it is barred by res judicata. The matter requires examination as to whether what have already been decided in T.S. No.26 of 1967 is directly and substantially in issue in T.S. No.1 of 1979 and in the suit, i.e., T.S. No.1 of 1979 any further investigation is required to be made by the Court. The issue in the earlier suit, i.e, T.S. No.27 of 1967 was whether the suit

land is included in the registered sale deed executed by the Defendants in favour of the Plaintiffs under registered sale deed dated 08.11.1956,

It appears that in T.S. No.103 of 1970, four issues had been framed and one of those was whether the Defendants have not sold the suit schedule land along with other lands to the first Plaintiffs under the registered sale deed dated 08.11.1956 and registered as document no.51/56 of SRC, Badakhemundi. During pendency of the above suit, one more additional issue was also framed, i.e, whether the suit is barred by principle of res judicata. The issue no.1 framed in T.S. No.27/67 and issue no.1 in T.S. No.103 of 1970 are more or less the same; difference being only with regard to the wordings involved. The Plaintiffs in both the suits had claimed their right, title and possession basing upon that registered sale deed dated 08.11.1956. The Plaintiffs although claimed that the Defendants are in forcible possessing the suit land, the Defendants case stood that they are in possession of the suit land but those are beyond the purview of the registered sale deed dated 8.11.1956. To ascertain the correctness of this particular fact, a Civil Court Commissioner had been deputed and the matter having travelled uptill this Court, ultimately, ultimately been upheld in the Second Appeal. The final finding has been that the Ambo Billo, Baniki Billo, Matia Billo and Bodia Billo consisting of 15 Kitas have not been sold to the Plaintiffs.

In that view of the matter, the Courts below, having found that the issues in both the suits are directly and substantially the same, in view of the decision of Issue No.1 in the previous T.S. No.27/67, they are right in holding that the said issue is no more required to be answered in the subsequent suit.

The substantial question of law is accordingly answered, which shows the way for dismissal of the Appeal.

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

***(D. Dash),
Judge.***



Basu