

SA NO.80 OF 1993

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-:: VERSUS ::-

Advocate(s) who appeared in this case by Video Conferencing Mode.

CORAM:

MR.JUSTICE D. DASH

Date of Hearing : 07.02.2022 :: Date of Judgment :: 15.02.2022

D.Dash,J. The Appellants, by filing this Appeal, under Section-100 of the Code of Civil Procedure (for short, ‘the Code’) have assailed the judgment and decree passed by the learned Sub-Judge, Rairangpur (at it was then) in Title Appeal No.06 of 1990, by which the judgment and decree passed by the learned Munsif (as then was) in Title Suit No. 08 of 1989, decreeing the suit filed by the Appellants as the Plaintiffs and

declaring their title over the suit land measuring Ac.0.34 decimals out of Sabik Khata No.87 under Plot No.222/902 corresponding to Hal Plot No.596/1588 under Hal Khata No.43 and for recovery of possession of the said land has been set aside.

The Appellants as the Plaintiffs had filed the suit for declaration of their title and recovery of possession of the same from the Defendant in respect of the suit land. The suit having been decreed, the Respondent being the Defendant suffering from the said judgment and decree had carried the Appeal under section-96 of the Code, which has been allowed and the judgment and decree passed therein are now impugned in this Appeal.

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:-

One Narayan Majhi has two sons namely, Madhu and Sukha. Madhu then died issueless when Sukha died leaving behind his two sons namely, Narayan and Salu. Again Salu died issueless and then Narayan being alive is Defendant No.1

It is stated that land measuring Manas 17-6-6-0 gandas under Khata No.87 situated in village Khejur and stood recorded in the name

of Madhu Majhi, Kalu Majhi and Naran Majhi (Defendant No.1). They were in joint mess and estate and during their jointness, Madhu and Salu died issueless. So, Defendant no.1 inherited all the landed property as aforesaid. He being in need of money, sold the land described in Schedule-B of the plaint to Plaintiff No.1 by registered sale-deed dated 07.02.1976 and delivered possession of the same. The sale was for valuable consideration. Second time, he also sold the land described in Schedule-B(I) of the plaint to the Plaintiff No.1 by registered sale-deed dated 03.05.1976 for valuable consideration and delivered possession of the same. The Defendant No.1 again being in need of money said to have sold the land described in Schedule-B(II) of the Plaint by registered sale-deed dated 09.02.1980 to the father of the Plaintiffs namely, Ramrai Majhi. It is also stated that on that occasion, the Plaintiffs and their father when verified all their deeds, found only Ac.0.61 decimals of land to be remaining in that Sabik Plot No.222/902 as the balance after execution of the two sale deeds. The Defendant No.1 is found to have sold land measuring Ac.0.20 decimals to the Defendant No.2. It is stated that without disclosing the fact that sale of land to Defendant No.2; the Defendant No.1 executed the last sale-deed for total land of Ac.1.14 decimals, when on the face of the fact that only Ac.0.41 decimals under that Sabik Plot No.222/902 was available with him and he had actually

delivered possession of that land measuring Ac.0.41 decimals on 09.012.1980.

The Plaintiffs however claim to be in peaceful possession of land of Ac.1.79 decimals out of Sabik Plot No.222/902 after aforesaid purchases from the Defendant No.1 by three sale-deeds. This land has been shown in Schedule-C of the plaint.

It is alleged that on 16.06.1984, the Defendant, (not indicated specifically) forcibly trespassed upon Ac.0.34 decimals of land out of Schedule-C land and amalgamated the said land with his other lands and forcibly possessed the same which has been better described in Schedule-D of the plaint (a part of Schedule-C). It is further stated that in the current settlement, the land measuring Ac.1.45 decimals out of Schedule-C land has been recorded in the name of the Plaintiffs and under Hal Khata vide five plots.

The Plaintiffs thus claim to be rightful owner of above land which is in their possession that they have purchased. They have filed the suit seeking the following reliefs:-

- (i) that decree may be passed, declaring the Plaintiffs to be the lawful and rightful of the owners of the suit land;
- (ii) that the possession of the suit land be delivered through Court.

4. The Defendant No.1 contested the suit by filing written statement and he being aggrieved by the judgment and decree passed by the Trial Court in favour of the Plaintiffs having carrying the First Appeal has been successful in upsetting the said judgment and decree passed by the Trial Court in decreeing the suit. The Plaintiffs have thus been non-suited by the First Appellate Court.

It is his case that he has sold only 2 Manas of land to Plaintiff No.1 through registered sale-deeds and had delivered the possession of the same to him, which has been in possession of the Plaintiff No.1 and accordingly, it has also been recorded in the name of Plaintiff No.1 in the record of the current settlement. It is specifically stated that the Defendant No.1 had not sold any land more than the extent as aforesaid to the Plaintiff No.1. It is further stated that the Plaintiffs were never in possession of the Ac.1.79 decimals of the land at any point of time and that sold land of 2 Manas-is equivalent to Ac.1.38 decimals. It is stated that the Plaintiff No.1 being a shrewd, rich and influential person of the locality with evil intention to grab the land of the Defendant No.1 has caused all those manipulations taking advantage of his helplessness and simplicity.

5. On the above rival pleadings, the Trial Court framed as many as nine issues. Taking up the crucial issues i.e. issue nos. 5 and 6 together

as to the claim of Defendant no.1 that he has sold only 2 Manas of land i.e. Ac.1.38 decimals vis-à-vis, the claim of the Plaintiffs as regards their purchase of the suit land, which is described in Schedule-D of the land forming the part of Schedule-C for decision; upon consideration of evidence let in by the parties, has returned the answers to the same in favour of the Plaintiff.

Next coming to the issue as to the plaintiff's acquisition of right, title and interest over the suit land, the answer has been that they are the owners of the land measuring Ac.1.79 decimals on the basis of their purchase under three registered sale-deeds. The other issue relating to possession of the suit land having also been decided in accepting the case of the Plaintiffs that they have been forcibly dispossessed by the Defendant. Based on the above, the suit was decreed and accordingly the Plaintiffs have been granted with the relief that they claimed.

The lower Appellate Court keeping in view the rival case/claims projected by the parties in their pleadings and on going through the evidence mainly documentary has upset the findings of the Trial Court in ultimately saying that the Plaintiff is liable to be non-suited and as such is not entitled to the reliefs claimed.

6. The Appeal has been admitted by order dated 13.01.1994, to answer the substantial questions of law as enumerated in ground no.9 of Memorandum of Appeal. The ground no.9, however, reads as under:-

- (a) In view of the concurrent findings of the Courts below regarding valid execution of sale deeds vide Ext.1 to 3 and passing of title thereunder, is the Appellate Court justified in dismissing the Plaintiff's suit merely on the ground that the delivery of possession has not been effected on the basis of third sale deed?
- (b) Is the Appellate Court justified in dismissing the plaintiff/appellants suit on the ground of lack of delivery of possession without considering the effect of Article-65 of the Indian Limitation Act?
- (c) In view of specific finding of trial court that the title have passed on to vendee under the impugned sale deeds, is the Appellate Court justified in dismissing the Plaintiff's suit?
- (d) Is the Appellate Court justified in disbelieving the delivery of possession vide Ext.3, overlooking the provisions as contained in section-92 of Evidence Act in absence of any specific finding about perpetration of fraud at the time of execution and registration of sale deed in favour of the plaintiffs?

Since all these above are inter-linked; the exercise has to be accordingly undertaken to find out the common answer.

7. Given a careful reading to the Plaintiffs case as projected in the plaint; it is seen that the Plaintiffs by filing the suit have prayed for

declaration that they are the rightful owners of the suit land, as described in Schedule-D of the plaint which is a part of the land described in Schedule-C of the plaint. This has been clearly stated in paragraph-6 of the plaint. At this stage, said paragraph-6 of the plaint, for proper appreciation is reproduced herein below:-

“That on 16.06.1984, the Defendant forcibly trespassed upon Ac.0.34 decimals of land out of C Schedule land and amalgamated same with his other lands and forcibly possesses this land, this land is the subject matter of the suit and described in Schedule-D of the plaint which is part of C Schedule land.”

The description of the suit land as given in Schedule-D of the plaint as per Sabik record is Plot No.222/902 under Khata No.87 of Jala-II kissam. It is said to be corresponding to the description as per record of Hal settlement record is Plot No.596/1588 under Khata No.43 of Sarada-II kissam.

8. It is the case of the Plaintiffs that the Defendant No.1 first sold the land measuring Ac.0.69 by registered sale-deed dated 07.02.1976 from out of the land under Sabik Plot No.222/902 as described in Schedule-B of the plaint. The concerned sale-deed has been admitted in evidence and marked as Ext.1. He next purchased the lands described in Schedule-B-I, measuring Ac.0.69 decimals from that Sabik Plot No.222/902 by registered sale-deed dated 315/76, which has been admitted in evidence

and marked as Ext.2. The third purchase is said to be in respect of the land under Schedule-B-II of the plaint by registered sale-deed dated 09.12.1980 which has been admitted in evidence and marked Ext.3. This is said to be concerned with Ac.1.14 decimals from out of that very Sabik Plot No.222/902. It is next stated that on verification of all the deeds, it was ascertained that after execution of the first two sale-deeds vide Exts. 1 and 2, only Ac.0.61 decimals of land was remaining in that Sabik Plot No.222/902 and from that Ac.0.61 decimals of land, the Defendant No.1 had sold Ac.0.20 decimals to Defendant No.2 prior to the execution of the sale-deed dated 09.12.1980 vide Ext.3 and that Defendant No.2 was in possession of the same being so delivered with. It is alleged that the Defendant No.1 had not disclosed the fact to the Plaintiff that he had sold the above extent of land of Ac.0.20 decimals to the Defendant No.2 prior to the execution of the last sale-deed Ext.3 whereby he sold away Ac.1.14 decimals of land. This clarifies the position that only Ac.0.41 decimals of land was remaining in balance after all the sales made by the Defendant No.1 in respect of the land under Sabik Plot No.222/902. The specific case of the Plaintiff is that pursuant to the last sale-deed, Ext.3 which the Defendant No.1 had executed in respect of land measuring Ac.1.14 decimals under Plot

No.222/902, the fact remains that said extent of land was not available to be sold by the Defendant No.1.

9. In view of all the above, the case projected by the Plaintiffs in the plaint, is not acceptable even for a moment that the Plaintiffs were in peaceful possession of the land measuring Ac.1.79 decimals appertaining to Sabik Plot No.222/902 after the aforesaid purchases from the Defendant No.1 by three separate sale-deeds as per the description of the land given in Schedule-C of the plaint, when the extent of the lands given in Schedule-B, B-I and B-II taken together, comes to Ac.2.52 decimals (Ac.0.69 decimals +Ac.0.69 decimals+Ac.1.14 decimals).

As per the claim of the Plaintiffs, when they purchased the land under Sabik Plot No.222/902, by the time the last sale-deed dated 09.12.1980, came into being, the extent of land as described in Schedule-D of the plaint measuring Ac.0.34 decimals was not available as from out of that admittedly Ac.0.20 decimals of land had already been sold by Defendant No.1 to Defendant No.2. Thus it appears that the claim of the Plaintiffs that they have the title over the said land and as such the right to possess is misconceived.

In that view of the matter, this Court is of the considered opinion that the Plaintiffs suit as laid for the reliefs claimed is liable to be dismissed and for all the aforesaid they are found to have rightly been

non-suited in the suit wherein they had claimed the declaration of their right, title and interest over the land described in Schedule-D of the plaint and for possession. For all the aforesaid, the substantial questions of law as aforestated are no more required to be answered.

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

Narayan

