

IN THE HIGH COURT OF ORISSA AT CUTTACK

S.A. NO.241 OF 2002

In the matter of an appeal under section 100 of the Code of Civil Procedure has assailed the judgment and decree passed by the learned Adhoc Additional District Judge, Jeypore in Title Appeal No.36/08/11 of 1997/2001/2001 by confirming the judgment and decree passed by the learned Civil Judge (Senior Division) Jeypore, in Title Suit No.56 of 1991.

Uma Charan Barik

....

Appellant.

-versus-

State of Orissa & Others

....

Respondents.

**Appeared in this case by Hybrid Arrangement
(virtual/physical mode)**

For Appellant

:::

M/s. S.D. Das, Sr. Advocate,
B.K. Sinha, B. Pattnaik,
R. Bhokta, L. Samantaray,
H.S. Satpathy, B.N. Udgata,
A. Mohanty, A.K. Naik,
Advocates

For Respondents

:::

Ms. Samapika Mishra,
Additional Standing Counsel.

CORAM:

MR. JUSTICE D.DASH

DATE OF HEARING::16.09.2022, DATE OF JUDGMENT::26.09.2022

The Appellant by filing this Appeal under Section 100 of the Code of Civil Procedure 1908 (for short, 'the Code') has assailed the judgment and decree passed by the learned Adhoc Additional District Judge, Jeypore in Title Appeal No.36/08/11 of 1997/2001/2001.

By the said judgment and decree, the Appeal filed by the present Appellant being the unsuccessful Plaintiff under Section-96 of the Code

in challenging the judgment and decree passed by the learned Civil Judge (Sr. Division), Jeypore in Title Suit No.56 of 1991 has been dismissed and thereby, the judgment and decree passed in the suit by the Trial Court in dismissing the suit filed by the Appellant as the Plaintiff have been confirmed and this Appellant (Plaintiff) has been non-suited. The Courts below have refused to grant any decree declaring his right, title and interest over the suit land and for recovery of possession of the said land from the Respondent (Defendant) by demolition of the structure standing thereon in further declaring the order dated 30.08.1988 passed by the Defendant No. 2 in Mutation Case No.1283 of 1984 as illegal and inoperative.

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.

3. The Plaintiff's case is that he is the purchaser of the property described in the Schedule of the plaint which forms the subject matter of the suit and that measures Ac.0.34 cents under Plot No.19 appertaining to Khata No.16, which has been presently numbered as Plot No.9/155 and Khata No.20/94. The area is commonly the called as Maghapadar of mouza Koraput. The Plaintiff claims to have purchased the suit property from the Defendant No.1 for valuable consideration of Rs.2,500/- under registered sale-deed duly executed by Defendant No.2. It is further

stated that the Plaintiff pursuant to the said sale has taken delivery of possession of the suit land being so given by the Defendant No.3. After purchasing the suit land, the Plaintiff applied for mutation of the said land in his favour. The Defendant No.2 then allowed the mutation and granted patta in respect of the suit land in favour of the Plaintiff. The order of mutation however was subsequently cancelled in Misc. Case No.1283 of 1984 by an order dated 30.08.1988. Alleging that on 13.05.1991 suddenly the Defendant engaged labourers in digging foundation on the western side of the suit for raising compound wall so as to include the suit land within the compound of the officials quarter of the Sub-Collector, Koraput, the suit came to be filed when request of the Plaintiff and his brother before the local official of the State did not receive any response. It is further stated that the boundary wall being raised, the suit land has been taken within the compound of the quarter of the Sub-Collector.

The Plaintiff claims to have learnt that the entire land under Plot No.9 measuring Ac.1.10 decimals have been acquired by the Government for construction of the residential quarter of Sub-Collector, Koraput on payment shall compensation to Defendant No.3, the vendor of the Plaintiff.

4. The Defendant Nos. 1 & 2 in their written statement have pleaded that as per the decision of the Site Selection Committee taken long long

back on 05.06.1945, the Collector, Koraput had intimated Executive Engineer by letter dated 28.12.1948 for construction of the quarter for Specifically Efficient Agent/RDO/SDO/Sub-Collector. In pursuant to the decision of the Site Selection Committee, the land under Plot No.9 was taken from Arjun Nayak in the year, 1956 on payment of Rs.100/- to him on 23.02.1956 as per the application dated 20.07.1956 tendered by the Defendant No.3. It is further stated that the Defendant No.3 had also received the said amount without any demur. The said compensation was paid towards the cost of the land by the Executive Engineer R&B to the Defendant No.3. After taking possession of the suit land in the year 1956, the official quarter of the Sub-Collector was constructed over the portion and the rest area remained for future development. Thus, it is stated that the entire Plot No.9 measuring Ac.1.10 cents called as Maghapadar was acquired by the State.

In view of above, it is said that the sale-deed executed by Defendant No.3 in favour of the Plaintiff on 05.04.1984 is illegal and inoperative and has never been acted upon. It is stated that the Plaintiff has obtained the documents from the Defendant No.3 in order to take a chance of making illegal gain. It is stated that when the Defendant No.3 had no right, title and interest over the property nor was possessing the same; the Plaintiff did not derive anything by virtue of that sale-deed even though it is registered. It is further stated that initially, the mutation

of the suit land having been illegally ordered that has been subsequently rectified.

5. The Defendant No.3 in his separate written statement has asserted that he was in exclusive possession of the suit land as the original owner and being in need of money he has sold the suit land to the Plaintiff by executing registered sale-deed dated 05.04.1989. It is also stated that he has delivered possession of the suit land to the Plaintiff. It is his case that State has never acquired the suit land at any given point of time in past.

6. On the above rival pleadings, the Trial Court has framed in total twelve issues.

Issue No.6, which is the vital one is the following:-

“Whether the suit land had been acquired by Defendant No.1 from the vendor by the Plaintiff on payment of compensation on 29.06.1956?”

The Trial Court upon examination of evidence and their evaluation having undertaken detail discussion from all possible angles at its level has answered the same against the Plaintiff. The following has been the conclusion :-

“From the documents produced from the side of the defendants no.1 and 2, it is clear and evident that Defendant No.3 had no possession over the suit land from the year, 1956. So, he had no valid title over the land and any deed executed by him is

inoperative in the eye of law. The Plaintiff has also not paid cost for the suit land after mutation in his name though he has stated that he has paid cost for the suit land. So, the Plaintiff has got no right, title, interest or possession over the suit land by virtue of the sale deed, Ext.1. This issue is decided against the Plaintiff and in favour of the Defendants No.1 and 2.”

7. The above conclusion has practically given the final below upon the suit in non-suited the Plaintiff.

The First Appellate Court on re-appreciation of evidence both oral and document at its level, dwelling upon the rival contention being the final Court of fact has recorded the same finding as had been returned by the Trial Court. Thus the finding of the Courts below is concurrent on this score that the Defendant No.3 had no more the right, title, interest and possession over the suit property so as to convey the same to the Plaintiff.

8. The Appellant has now filed this Appeal with a bid to set aside the above concurrent finding of the Courts below.

The present appeal had been admitted by order dated 10.08.2004 to answer the following substantial questions of law:-

- “(i) Whether in absence of any Government notification with regard to acquisition of land, the Government can acquire the land of any private person?
- (ii) Whether in absence of any signature with regard to receipt of cheque for compensation, it can be held that defendant no.3 has received the compensation amount?

(iii) Whether the mutation application having been allowed in favour of the Plaintiff, the view of the subsequent cancellation of the said mutation application with regard to the suit land after four years, it can be held that the Plaintiff was never in possession of the suit land?”

9. A careful reading being given to the above, this Court upon hearing learned Counsel for the parties and with their consent has substituted the above substantial questions of law by the following:-

“Whether the concurrent findings of the Courts below that the Defendant No.3 had no more subsisting the right, title, interest and possession over the suit property so as to convey the same to the Plaintiff suffer from the vice of perversity warranting interference for being answered to the contrary and in favour of the Plaintiff?”

9. Learned Senior Counsel for the Appellant submitted that in the absence of any notification or document being proved from the side of the State that the suit land belonging to the Defendant No.3 had ever been acquired by the State pressing into service, the provisions of Land Acquisition Act, 1894, the Courts below had no other alternative but to decree the suit when the Defendant No.3 admits to have sold the suit land to the Plaintiff. He further submitted that the Defendants having not been able to prove that the suit land belonging to the Defendant No.3 had been acquired by following the procedures prescribed in the Land

Acquisition Act, 1894 and has culminated by payment of compensation, the Courts below have completely gone wrong in dismissing the suit filed by the Plaintiff being simply carried away by the factual position as it emanates from the evidence that official quarter of the Sub-Collector stands on a portion of the land which belonged to the Defendant No.3. He further submitted that the ownership right of a person over the property could not have been taken away by the State by force and when the Defendants, State has utterly failed to prove that the property belonging to Defendant No.3 had been duly taken by the State by following all such procedure prescribed by the Land Acquisition Act, 1984 and there has been payment of compensation, the suit is bound to be decreed and at present at least granting the compensation by assessing the same keeping in view the present market value of the suit land with pendentelite and future interest. He submitted that the Courts below have not kept it in mind that the State could not have deprived the Defendant No.3 of his property. He submitted that in this way by simply putting up construction over the land even if has continued to stand for long length of time; the title of the true owner would not extinct. He, therefore, submitted that the findings of the Courts below being the outcome of perverse appreciation of evidence as also when the legal aspects have been ignored while reaching at the conclusion; those are liable to be set aside.

10. Learned Counsel for the State submitted all in favour of the concurrent findings of the Courts below that the Defendant No.3 had no subsist right, title, interest and possession over the suit land to transfer the same to the Plaintiff on 05.04.1984. She submitted that the sale-deed itself is a created document at the behest of the Plaintiff so as to take a chance in the matter by taking advantage of the situation that since the acquisition is of long long back all such documents in the Government offices are not likely to be available. It was submitted that the Courts below being aware of the position that the State cannot/should not deprive the citizen of his property without following the process of law, have approached the evidence for their appreciation. He further submitted that the Courts below have rightly arrived at a conclusion by taking cumulative view of the long standing facts and circumstances as emanate from the evidence on record that the Defendant No. 3 had been paid with the compensation for his land long long back, sometime in the year 1950 and even before and that the suit land was not in his possession. In this connection, he had taken the Court through the relevant paragraphs of the judgment of the Courts below where under elaborate discussion of all those facets has been made.

11. Keeping in view the submissions made and I have carefully read the judgments passed by the Courts below.

12. The fact does not stand disputed that the erstwhile owner of the suit land was Defendant No.3. The Defendant Nos. 1 & 2 state that the suit land was acquired by Defendant No.3 in the year 1956 on payment of compensation of Rs.100/- to him on 29.09.1956 although no such document relating to the land acquisition to any proceeding initiated under the Land Acquisition Act has been proved; it is stated that Defendant No.3 finding his land to have been occupied by the State had made an application before the Collector, Koraput on 20.07.1956, which has been marked as Ext.S/3. This document has been admitted in evidence without objection.

The contents of the said petition are very much important. It has been stated therein that the quarter of Revenue Divisional Officer had already been constructed over the land of Defendant No.3 whose extent was Ac.1.10 cents, commonly called Maghapadar. It has also been stated that on 27.02.1956, the Defendant No.3 on being apprised of the said fact had measured the land and told him that he would be paid with the compensation. In that very petition, Ext.S/3, the Defendant No.3 had requested the Collector to fix the compensation amount for payment of the same to the Defendant No.3 for said action of the State in taking away his land for being so utilized/ used. The reverse side of the application reflects the subsequent action taken. The P.W.D Department being asked had issued a cheque of Rs.100/- on 20.09.1956 to the

Anchala Adhikari on account of land acquisition charges. The number of the official cheque and cheque book find mentioned therein. Most importantly, the counterfoil of the cheque issued has also been proved as Ext.U which contains the signatures of the then Executive Engineer as Ext.U/1. The final cash book proved reflects the correct position. The Trial Court had made detail discussion of said evidence and that has also been concurred by the First Appellate Court on further examination.

With the above, the evidence of possession of the suit land and its use and utilization for quite a long length of time being taken into account when the Courts below being aware of the position that State has no right to take away the property of a citizen by force by putting upon construction over night without following process of law have in the facts and circumstances of the case as those emanate from the evidence on record, stretching over more than three decade are found to have very rightly non-suited the Plaintiff who has now come forward to stake his claim over the property not as the land loser or oustee but as a purchaser in the year 1984 in respect of a portion i.e. Ac.0.34 decimals for a sum of Rs.2500/-, when admittedly by that time the property was within the compound of the official quarter of the Sub-Collector as is from the evidence.

The substantial question of law is accordingly answered against the Plaintiff which thus leads to confirm the judgments and decrees passed by the Courts below.

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

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

Narayan

