

IN THE HIGH COURT OF ORISSA AT CUTTACK

SA No.244 of 1992

In the matter of an appeal under section 100 of the Code of Civil Procedure assailing the judgment and decree dated 30.07.1992 and 14.08.1992 respectively passed by the learned District Judge, Koraput, Jeypore in Title Appeal No.27 of 1991 setting aside the judgment and decree dated 14.08.1991 and 24.08.1991 respectively passed by the learned Munsif, Koraput in Title Suit No.36 of 1991.

Kailash Pandey

....

Appellant

-versus-

Sahadev Sahu

....

Respondent

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

For Appellant - Mr.B.C. Panda
(Advocate)

For Respondent - Mr.P.V.B. Rao
(Advocate)

CORAM:

MR. JUSTICE D.DASH

Date of Hearing : 16.05.2022 : Date of Judgment:20.06.2022

The original 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 30.07.1992 and 14.08.1992 respectively passed by the learned District Judge, Koraput, Jeypore in title Appeal No.27 of 1991.

By the same, the Appeal filed by the present Respondent (Plaintiff) under section 96 of the Code has been allowed whereby the judgment and decree dated 14.08.1991 and 24.08.1991 respectively

passed by the learned Munsif, Koraput in Title Suit No.36 of 1991 have been set aside and the suit filed by the Appellant, as the Plaintiff, has been dismissed and thus, he has been non-suited.

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 Plaintiffs' case is that one Sribachha Mishra was the owner of the suit land described in Schedule-A of the plaint. He had entrusted the Plaintiff for looking after of his immovable property including the suit land and permitted him to construct a house on the land and stayed therein. The Plaintiff was residing in that land at Semiliguda till March, 1964. The Defendant, who was earlier known to the Plaintiff, came and stayed on a portion of the suit land on the western side by putting up a hut. The hut got burnt in the year 1965. So, the Defendant requested the Plaintiff to permit to occupy the suit land by constructing a kuchha house over there with an assurance that he would vacate the same when would be so required by the Plaintiff. The Plaintiff accordingly permitted the Defendant to do so over the land specifically described in Schedule-B of the plaint, which is a part of Schedule-A.

The Plaintiff's further case is that by registered sale deed dated 16.03.1981 on payment of consideration of Rs.2000/-, he purchased schedule-A land from said Sibachha. Thus, he became the owner of the entire land in Schedule-A which includes Schedule-B land. Pursuant to the said sale, he has also mutated the said land in his favour. The Plaintiff, with a view to remodel his house and utilize the entire land, when requested the Defendant to vacate that the portion of Schedule-B

land in his occupation, the Defendant, then asserted his title over the suit property. So, the suit came to be filed.

4. The Defendant, coming to contest the suit, has filed the written statement. In his written statement, he has stated that he occupied Schedule-B land which was lying fallow and constructed his house over there and started running a hotel. The house was burn in the year 1966 and he constructed a pucca building and continued to run his hotel in the name and style of “Shankar Hotel”. It is his case that he has been in continuous possession of the suit land for more than 40 years and has perfected title by way of adverse possession. The ownership of Sribaccha Mishra in respect of the suit land as pleaded by the Plaintiff is denied and the case projected by the Plaintiff that the Defendant was so permitted by him to remain in occupation of Schedule-B land has been refuted.

5. Faced with the rival pleadings, the Trial Court has framed six issues. On examination of evidence and their evaluation, the Trial Court has first of all answered that Sribachha was having the right, title and interest over the suit land and by virtue of purchase of the same by registered sale deed, the Plaintiff has acquired the right, title and interest. In saying so, having gone to say that the Plaintiff has failed to establish his claim of acquisition of title by way of adverse possession, the suit filed by the Plaintiff had been decreed.

The First Appellate Court being moved by the aggrieved by the Defendant, sat over to judge the sustainability of the findings of the Trial Court. On extensive discussion of evidence on record and their critical analysis, it has been held that the Plaintiff, by virtue of his long standing possession of Schedule-B land, in exercising all the rights of

ownership to the knowledge of all concerned, has acquired title over the same by way of adverse possession. The suit of the Plaintiff seeking restoration of possession of Schedule-B land from the Defendant has thus been dismissed.

6. The present Appeal has been admitted on 30.09.1993 to answer the substantial questions of law as indicated in Ground No.(B), (C) & (D) of the Memorandum of Appeal, which read as under:-

“(B)For that the learned lower appellate court, having not touched the finding of the learned trial court that the ‘B’ schedule property formed a part of the ‘A’ schedule property, grossly erred in law in reversing the decision of the learned trial court by erroneously holding that the defendant prescribed his title by adverse possession?;

(C) For that the learned lower appellate court committed an error of law apparent on the face of the record in holding that the defendant prescribed title by adverse possession by throwing onus wrongly on the plaintiff to prove and establish that he had permitted the defendant to occupy the suit land. It is submitted that in a suit for possession, brought on title, the entire onus is on the defendant to plead and prove that he has prescribed title by adverse possession after establishing all the required ingredients of adverse possession. Mere possession for any length of time would not make it adverse to enable the defendant to prescribed title to the suit property?; and

(D) For that the decision of the learned lower appellate Court is vitiated in law for its failure to consider the vital materials on record including Ext.2, the ROR, Ext.5 series, the rent receipts, Ext.6 series, NAC demand notice and receipt in respect of the suit property and other documents which proved and established beyond any doubt that the plaintiff had been in possession of the suit property. On the other hand, the defendant could not adduce even a single scrap of paper to prove his so-called possession over the suit property. In these circumstances, the decision of the learned lower appellate court reversing the finding of the learned

trial court on adverse possession of the defendant is liable to be quashed”

7. Learned counsel for the Appellant submitted that on the basis of the overwhelming evidence on record both oral and documentary on record, when the title of the Plaintiff over Schedule-B land stands established, the First Appellate Court ought to have proceeded to find out as to whether the Defendant has established his claim of acquisition of title by way of adverse possession so as to say that the title of the Plaintiff from the time of his vendor over Schedule-B land stood extinguished. He submitted that simply looking at the factum of possession of the Defendant, when all other ingredients to establish the case of acquisition of title by way of adverse possession have not been established through clear, cogent and acceptable evidence, the First Appellate Court has completely erred in law by dismissing the suit. He, therefore, urges for answering the substantial questions of law in favour of the case/claim of the Plaintiff and against the case/claim of the Defendant.

Learned counsel for the Respondent submitted all in favour of the findings recorded by the First Appellate Court. According to him, the Plaintiff having projected a case that the Defendant was earlier in possession of Schedule-B land and later on was permitted by him to occupy the suit land by constructing a house when the evidence on record reveals that he has put up construction of permanent nature and running a hotel there in running his livelihood, on the failure of the Plaintiff to establish such case of permissive possession of Schedule-B land by the Defendant, the First Appellate Court has rightly held that the suit as laid for the reliefs claimed is liable to be dismissed.

8. Keeping in view the submissions made, I have gone through the judgments passed by the Courts below. I have read the plaint and written statement and have perused the oral and documentary evidence on record.

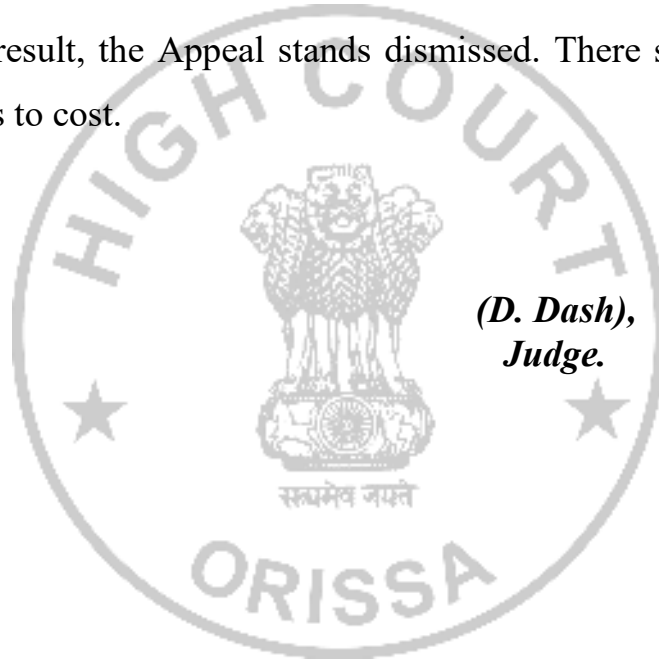
9. The very case of the Plaintiff is that when he was looking after the property on behalf of Sribachha on the request of the Defendant, he allowed him to occupy Schedule-B land and stayed there having a dwelling house, which later on being destroyed by fire, he was again permitted to build a kucha house and continue to occupy. It is said that at that time, he had promised that he would be vacating the suit site as and when would be so asked by the Plaintiff. The Plaintiff claims to have purchased the suit land long thereafter in the year 1981. Sribachha Mishra, as the original owner, has not stated so and it is also not stated that when Sribachha Mishra purchased the suit land in the year 1964 from Somanath Mishra, the Defendant was then in occupation of the said land or not.

The Plaintiff's case is that in the month of March, 1964, the Defendant first occupied the suit land, i.e, two months after the purchase of the suit land by Sribachha as can be seen from Ext.9. The sale deed dated 16.03.1981 standing in favour of the Plaintiff (Ext.1) does not contain any such recital. The Plaintiff admits that the Defendant has been in occupation of the suit land at least from March, 1964 onwards till institution of the suit on 20.12.1982, which covers a period of more than fifteen years and it is said that he having constructed a house over there which of course stated to be with the permission of the Plaintiff has been staying there when the Defendant running a hotel and earning his livelihood from out of the income of that he is deriving out of the same. With Such evidence on record, the Plaintiff having failed to

establish his case that he had so permitted the Defendant to occupy the suit land that too with the consent of his vendor, who was then the title holder and then after his purchase, he again permitted him to so continue to occupy, the Plaintiff's suit, as laid, in my considered view is liable to be dismissed.

For all the aforesaid, the substantial questions of law are accordingly answered against the claim/case of the Plaintiff in so far as Schedule-B is concerned and thus the judgment and decree passed by the First Appellate Court are hereby confirmed.

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



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