

**IN THE HIGH COURT OF ORISSA AT CUTTACK**

**S.A. No.14 of 1993**

In the matter of appeal under Section 100 of the Code of Civil Procedure assailing the judgment and decree dated 15.09.1992 and 22.09.1992 respectively passed by the learned Subordinate Judge, Bonai in T.A. No.1 of 1991 setting aside the judgment and decree dated 26.10.1990 passed by the learned Munsif, Bonai, in T.S. No.4 of 1988.

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***Parsuram Mahanta***

....

***Appellant***

-versus-

***Guru Charan Mahanta (Since  
Dead) by his LRs***

....

***Respondents***

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

***For Appellant*** - Mr.A.K. Mohanty  
(Advocate)

***For Respondents*** - Mr.G.Mohanty  
(Advocate)

**CORAM:**

**MR. JUSTICE D.DASH**

**Date of Hearing : 11.10.2022 : Date of Judgment:20.10.2022**

***D.Dash,J.*** 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 dated 15.09.1992 and 22.09.1992 respectively passed by the learned Subordinate Judge, Bonai in T.A. No.1 of 1991.

The Respondent, being the aggrieved Plaintiff in T.S. No.4 of 1988 of the Court of the learned Munsif, Bonai, had carried the Appeal under Section 96 of the Code, in assailing the judgment and decree passed in the said suit. The suit, having been decreed declaring the right,

title and interest of the Appellant (Plaintiff) over the suit land followed by a decree for recovery of possession of the suit land from the Respondent (Defendant) in the First Appeal, the said judgment and decree have been set aside and this Appellant (Plaintiff) has been non-suited.

The Respondent, having died during pendency of this Appeal, his legal representatives have come on record and are now contesting 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. The Plaintiff's case that one Samra Oram was the original owner in possession of the suit land described in the schedule of the plaint. On his death, his son Mangra Oram possessed the same having the right, title and interest. He has sold the suit land with other lands to the Plaintiff by registered sale deed dated 06.12.1983 for a consideration of Rs.4000/- by obtaining permission from the Competent Authority as required under the Orissa Scheduled Areas Transfer of Immovable Property (By Scheduled Tribes) Regulations, 1956 (hereinafter called as 'the Regulation 2 of 1956'). It is stated that the Plaintiff had taken delivery of possession of the land and was in possession of the same since the date of his purchase. He has also mutated the suit land in his favour in Mutation Case No.478 of 1984 standing allowed by an order dated 07.07.1984. The Defendant is said to have no right, title and interest over the suit land. It is alleged that falsely the Defendant initiated a proceeding under section 145 of the Code of Criminal Procedure (for short, 'the Cr.PC') which stood numbered as Misc. Case

No.55 of 1984, the Executive Magistrate, by order dated 09.05.1988 when declared the possession of the suit land of the Defendant, the suit thereafter has been filed.

4. The Defendant, in the written statement, denying the plaint averments, have contended that he had purchased the said land from Mangra Oram for a consideration of Rs.300/- way back in the year 1959 by a plain paper sale deed (Ext.A). It is accordingly stated that he has been in possession of the same since then. It is his case that by virtue of such long possession, he has acquired the title over the said land and, therefore, the Executive Magistrate has rightly declared his possession in that proceeding under section 145 Cr.P.C.

5. On the above rival pleadings, the Trial Court framed as many as eight issues. First coming to answer issue no.5 with regard to the claim of the Defendant as regards his purchase of the suit land in the year 1959 for a consideration of Rs.300/- from Mangra Oram under Ext.A, the Trial Court, by examining the evidence, has declined the claim of the Defendant over the suit. Then holding the Plaintiff to be the original owner of the suit land having purchased the same by registered sale deed (Ext.1) from Mangra Oram having obtained permission from the Competent Authority as required under law, the suit stood decreed.

6. In the Appeal filed by the Defendant, who suffered from the judgment and decree passed by the Trial Court, the First Appellate Court has held that the Defendant, having remained in long possession of the suit property, on the basis of Ext.A, the plain paper sale deed of the year 1959 as the owner has the title over the suit land.

7. The present Appeal has been admitted to answer the following substantial questions of law:-

“A. The lower appellate court having recorded a conclusion that the plain paper agreement cannot be related to the suit property, whether the plea of possession of defendant, pursuant to the said document can be believed?; and

B. Whether the elements required to be proved for adverse possession have been pleaded and proved by the defendant?”

8. Learned counsel for the Appellant submitted that the First Appellate Court has erred both on fact and law by accepting the claim of the Defendant over the suit land as having the right, title and interest over the same. He further submitted that even if the possession of the Defendant over the suit land is accepted for all these period, the same could not have been held to be sufficient to clothe him with the right, title and interest in respect of the suit land and on the face of the registered sale deed standing in favour of the Plaintiff, which had come into being after obtaining permission from the Competent Authority, at the instance of that Mangra, the vendor as required under law, the judgment and decree passed by the learned Trial Court are to be restored.

9. Learned counsel for the Respondents, on the other hand, supported the judgment and decree passed by the First Appellate Court. According to him, now the claim of the Defendant as to having the right, title and interest is not against a person belonging to Scheduled Tribe but it is against a person, who is not a member of the Scheduled Tribe and, therefore, his claim of acquisition of title over the suit land by way of adverse possession cannot be ignored and thus, the First Appellate Court has rightly dismissed the suit at the instance of the Plaintiff, who claims to be a purchaser from that Mangra Oram.

**10.** Keeping in view the submissions made, I have carefully read the judgments passed by the Courts below. I have also gone through the plaint and written statement. This Court has also extensively travelled through the evidence on record, both oral and documentary.

**11.** The settled position of law is that a person, not being a member of Scheduled Tribe Community, cannot advance a claim of acquisition of title over the land belonging to a person of Scheduled Tribe Community by way of adverse possession. The reason for the same is that when said right, title and interest of very person being a member of the Scheduled Tribe is inalienable as he cannot alienate without the permission of the Competent Authority under the provision of Regulation 2 of 1956, such a claim by the possessor is not entertainable in the eye of law as he cannot claim to have so started and continued to possess as owner.

In the given case, we are not concerned with the claim of the Defendant as regards the acquisition of title by way of adverse possession over the land belonging to a Scheduled Tribe. But, here the Plaintiff claiming to have derived the title over the suit land from that Scheduled Tribe Community is now seeking for declaration of his right, title, interest and possession over the said land as against the Defendant, who is also not a member of Schedule Tribe Community.

**12.** Coming to the factum of possession of the suit land, the Plaintiff is not pleading here that he has ever been dispossessed from the suit land and that Defendant forcibly occupied the same. He, having examined himself as P.W.1, when has maintained silence on that score, yet has advanced the prayer for recovery of possession. The P.W.3 has stated that two years after the sale in favour of the Plaintiff, disturbance started and Defendant dispossessed him thereby. The Defendant, being

examined as D.W.1, has stated to be in possession right from the year 1959. At this juncture, the evidence of P.W.1 is very important to be taken note of that when the permission proceeding was going on, the Defendant had claimed his possession over the suit land. So, prior to the purchase, the Defendant has been claiming to be in physical possession over the suit land. It is his written statement that he has a dwelling house over the suit land and over the rest adjoining land, he is has been carrying out agricultural operation. About the existence of this house, although P.W.1 is admitting it in his evidence, yet at the same time, is expressing his ignorance as to who had constructed said house when other witness (P.W.3) does not even admit about the existence of the house and he says that a dilapidated house stands adjoining the suit land and that is, however, is stated to have been constructed a by the Defendant. The Defendant's positive case is that having purchased the suit land, he has constructed house over there. Thus, the case of the Defendant that having purchased and possessed the property, he has constructed the house over it finds full support from the evidence let in by the Plaintiff.

13. In such state of affairs in the evidence, the First Appellate Court, finding good reasons, upon evaluation of evidence when has held that the Defendant has been in possession of the suit land since the year 1959 and has constructed the house over it, the same is found to be well in order. In view of that, merely because the plain paper sale deed (Ext.A) does not find mention of khata number and plot number of the land, no fault can be found with the conclusion that the possession of the Defendant over the suit land was all along from the year 1959 claiming to be its owner.

14. In view of the above, when the Defendant's case that he has been in possession of the suit land from the year 1959 in an open, peaceful and continuous manner by exercising all the rights of ownership is accepted and here as the Plaintiff, being not a member of the Scheduled Tribe Community, claims the property on the basis of his so-called purchase from the vendor against whom the possession of Defendant was adverse, this Court is of the view that had the lands been in the hands of the vendor of the Plaintiff, even though the claim of the Defendant as to have acquired the right, title and interest over the suit land by virtue of the adverse possession would not have been so entertained since that vendor had no alienable right, the same principle would, however, not come to have its play now as here the Plaintiff, who is not a member of Scheduled Tribe Community is coming into the picture during the continuance of such possession of the land by the Defendant and, therefore, the prior possession of the Defendant over the suit land would have to be held as adverse to the interest of the present Plaintiff as he now claims.

The aforesaid discussion and reasons thus provide answers to the substantial questions of law leading to the dismissal of the Appeal and holding that the judgment and decree passed by the First Appellate Court, which have been impugned in this Appeal, are not liable to be interfered.

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

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