

IN THE HIGH COURT OF ORISSA AT CUTTACK

SA No.151 of 2002

In the matter of an appeal under section 100 of the Code of Civil Procedure assailing the judgment and decree dated 22.01.2002 and 05.02.2002 respectively passed by the learned Additional District Judge, Bhanjanagar in Title Appeal No.11 of 2000 confirming the judgment and decree dated 12.11.1990 and 29.11.1990 respectively passed by the learned Munsif, Bhanjanagar, in Title Suit No.31 of 1970.

President, K.S.U.B, College, *Appellants*
Bhanjanagar & Another

-versus-

Rabinarayan Rath & Others *Respondents*

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

For Appellants - Mr.Maheswar Mohanty
(Advocate)

For Respondents - Mr.P.C. Mishra, T.Barik and
D.R.Mohapatra
(Advocates)

CORAM:
MR. JUSTICE D.DASH

Date of Hearing : 29.04.2022 :: Date of Judgment:20.06.2022

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 dated 22.01.2002 and 05.02.2002 respectively passed by the learned Additional District Judge, Bhanjanagar in Title Appeal No.11 of 2000.

By the same, the judgment and decree dated 12.11.1990 and 29.11.1990 respectively passed by the learned Munsif, Bhanjanagar, in Title Suit No.31 of 1970 decreeing the suit filed by one Bishnupriya Rath, the original Plaintiff whose legal representatives are in her place since pendency of the First Appeal and have been arraigned in the present Appeal as the Respondents (Plaintiffs), have been confirmed. The suit has thus been decreed directing the Appellants (Defendants) to deliver the vacant possession of the suit land to the Plaintiff.

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 original Plaintiff purchased Ac.4.51 cents of padar land in appertaining to Khata No.129, Plot No.363-1/D.6 in Mouza-Lalsing as described in the plaint from Udayanath Rout by registered sale deed dated 22.07.1955 for a valuable consideration of Rs.1350/-. After her purchase, she had obtained patta in her name. It is stated that by such purchase, she became the absolute owner in possession and enjoyment of the same. It is alleged that on 07.12.1957, the Bhanjanagar College Authorities (Defendants) encroached upon the said plot unlawfully and prevented the Plaintiff from possessing the same. As her request went unheeded to, she issued notice to the Defendants to vacate the suit land. When the move in that direction did not yield any result, she filed the suit.

4. The Defendants in their written statement have stated that the land in the suit had been occupied by the founders of Bhanjanagar College before 07.12.1957. They had delivered possession of the same to the College Committee when College started to function. The College

Committee having taken the possession of the suit land, have been possessing the same since then. It is stated that whatever right, title and interest that the Plaintiff had over the suit land, the same stood extinguished by virtue of long possession of the said land by the Defendants which was all along open, peaceful continuous exhibiting hostile animus to the knowledge of the original Plaintiff for much more than the period prescribed which has been completed long prior to the institution of the suit on 06.12.1969

5. On the above rival pleadings, the Trial Court having framed four issues, after examination of the evidence and their detail analysis, has decided the crucial issue no.3 as regards the right, title and interest of the Plaintiff over the suit property in ruling upon the sustainability of her claim of recovery of possession of the suit land in her favour.

The Defendants-College, being aggrieved by the said finding followed by the decree in favour of the Plaintiff, having carried the Appeal, have failed. Hence, this Second Appeal.

During pendency of this Appeal, the Plaintiffs have filed an application under Order 6 Rule 17 of the Code for amendment of the plaint so as to insert the description of the suit land in consonance with the records of the hal settlement, which has been numbered as I.A. No.249 of 2019.. The Defendants have also filed an application under Order 41 Rule 27 read with section 151 of the Code seeking leave to adduce additional evidence which are the record of right, rent receipts and the draft kahtian prepared during hal settlement in respect of the suit land and that has been numbered as I.A. No.99 of 2021.

The learned counsels for the parties having been heard on such move; the IAs would be disposed of in course of the discussion to follow.

6. The present Appeal has been admitted on 27.06.2002 to answer the substantial questions of law, as indicated in Ground No.B, C and D of the Memorandum of Appeal and those read as under:-

“(i) Whether the learned appellate court had not adverted to all the reasons given by the Trial Court and not come into close quarters and if so the learned appellate court could have referred the exhibited documents relied on by the appellants (defendants) in its judgment but the lower appellate court deliberately has not referred the exhibited documents resulting the dismissal of T.A. No.11 of 2000?;

(ii) Whether the admission of parties to the suit in evidence has been misread and not properly considered by the courts below?’ and

(iii) Whether the learned lower appellate court though has discussed Ext.D but erroneously did not accept the same as a piece of admissible evidence in order to give a finding that the College authority is in possession since 1963 over the suit land and Ext.D is a vital piece of evidence as it is the admission of husband of plaintiff, the lower appellate court should have exercised its power to draw inference in favour of defendants with regard to possession?:

7. Attacking the concurrent findings of the Court below that the Plaintiff has the subsisting right, title and interest over the suit property and as such is entitled to recover the possession of the same from the Defendants; learned counsel for the Appellants submitted that the overwhelming evidence on record that the Defendants are in open, peaceful and continuous possession of the suit land from the year 1957 onwards till filing of the suit, have been ignored and thereby the Courts below have fallen in error by not holding that the right, title and interest of the Plaintiff over the suit land, if any, by virtue of her purchase stood extinguished long prior to the filing of the suit, i.e., 06.12.1969. He further submitted that the Defendants are in possession of the suit land

as its owner from the very beginning of its establishment of the college and the suit land has all along remained within its campus and used as such to the knowledge of the Plaintiff, which is certainly adverse to her interest and in denial of her rights when the Defendants have all throughout been claiming the ownership of the same unto them. He, therefore, submitted that the Courts below ought to have dismissed the suit. In support of the same, he contended that even during the hal settlement, which has commenced and concluded during the pendency of the litigation, such possession of the Defendants has been recognized and that fortifies their case as of having long prior possession of the suit land. So, he submitted that the documents prepared during hal settlement being essential for a just decision in the suit; those be admitted as additional evidence and considered in their proper perspective. He, however, submitted that the amendment of plaint, as sought for at this stage to introduce the corresponding description of the suit land as per hal settlement records are not so necessary.

8. Learned counsel for the Respondents submitted all in favour of the concurrent findings recorded by the Courts below. According to him, when the Plaintiff established her title over the property by virtue of her purchase by registered sale deed dated 22.07.1955 and when the Defendants have failed to establish their case of acquisition of title by way of adverse possession, the Courts below have rightly decreed the suit. In this connection, he invited the attention of the Court to several documents to show that the possession of the suit land by the Defendants was not at all in denial of title of the Plaintiff and rather that stood admitted from time to time which itself is enough to discard said claim of the Defendants.

9. 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 and have travelled through the depositions of witnesses side by side the documents admitted in evidence from the side of the parties.

10. In the given case, the Courts below have concurrently found that the Plaintiff has purchased the suit land from its erstwhile owner by registered sale deed dated 22.07.1955 for valuable consideration. The Defendants, in their written statement, have said to have occupied the suit land one year before the said date but have not given any specific date as to when they made the entry. The Plaintiff's claim of purchase of the suit land by registered sale deed dated 22.07.1955 for a valuable consideration from the true owner as he was then having been established and when it is said that she being delivered with the possession of the same by her vendor, came to possess it on that day; in the absence of any specific pleading and acceptable evidence from the side of the Defendants that they were in possession of the suit land on and from any such date before that date of purchase of the suit land by the Plaintiff; their possession even if computed from the date of purchase of the suit land by dispossessing the Plaintiff therefrom in view of the settled position of law that possession follows the title; it has to be said that the Plaintiff's possession of the suit land was there at a time well within a period of 12 years prior to the filing of the suit. Furthermore, the record or right relating to the suit land as it was at the time of filing of the suit was in the name of the Plaintiff and she too has proved to have been paying the rent to the State as assessed in respect of the suit land.

11. It is the settled position of law that mere possession of the suit land by the possessor for any length of time whatsoever ipso facto does not establish his/her claim of title over the said property by way of adverse possession. The possessor is under legal obligation to show that the possession was open, peaceful, continuous and uninterrupted, most importantly exhibiting hostile animus in denial of the title of the true owner to his/her knowledge and claiming all sorts of right, title and interest thereto unto him/her. The Courts below, as seen from the judgment, on detail discussion of the evidence, have held that the Defendants have not been able to prove the required ingredients for establishment of their claim of acquisition of title over the suit land by way of adverse possession and this Court finds no such reason or justification to interfere with the said finding as such conclusion is well in order both in facts and law.

In view of the above, the prayer for amendment of plaint advanced by the Plaintiff is found to be unnecessary, more particularly when the Defendants do not dispute as to the recording of the suit land as per the description in consonance with sabik records in the hal settlement. For all the aforesaid, the move for adduction of additional evidence in proving the hal settlement records as made by the Defendants-College is also found to be devoid of merit.

12. On going through the evidence on record and more importantly the evidence of the Plaintiff examined as P.W.3 on 05.04.1990, it is, however, seen that she has in clear terms stated that the suit land is situated inside the campus of the College. She has further stated that her husband was looking after the property on her behalf and in fact he was associated from the beginning when she purchased the suit property which was in her possession from 1955 to 1958. It has also been stated

by P.W.4, the head-clerk of the College that on 29.01.1957, the first meeting of the College was held and prior to that, the suit land as also other lands were acquired by the College when in the year 1957 some lands were transferred in favour of the College by so many persons of the locality and Governing Body had leased out certain portion of those lands to different persons for cultivation.

From the side of the Plaintiff, one resolution of the emergent meeting of the College Committee held on 2.2.1962 has been admitted in evidence and the relevant portion of the same has been marked as Ext.5/1. It appears therefrom that a decision had been taken by the College Committee that they would move the Collector for acquiring the suit land and the College then was agreeable to pay the cost as it was badly in need for construction work required for the College to proceed for expansion. In a meeting subsequent thereto, a resolution had been made and decision had been taken that the Revenue Divisional Officer be requested to expedite the land acquisition proceeding of the land. Being the authorized agent of the Plaintiff, her husband Sri Lalit Mohan, then too had addressed a letter to the Secretary, Bhanjanagar College Committee, which has been admitted in evidence and marked Ext.D and that is found to be important.

In the case at hand, facts stand admitted that the foundation of the College was laid in the year 1953 and thereafter, the building materials were stacked over the land of the Plaintiff. Another letter proved from the side of the Plaintiff and marked as Ext.6 had been addressed to the Secretary. It had been written in the first letter (Ext.R) that the land measuring Ac.4.51 cents at Lalsingh be purchased by the Defendants on payment of Rs.5000/-. The subsequent letter was in reiteration of the said fact. The Plaintiff in her notice, marked Ext.H, which is dated

01.05.1965 had volunteered to sale the land by putting a clear offer to pay a sum of Rs.15000/- by the owner and an ultimatum that if they would not come forward to purchase, they should vacate or face the legal action.

13. Facts stand that almost from the time of purchase of the suit land or shortly thereafter, the suit land is in possession of the Defendant-College, which has been imparting higher education to the students of the locality. In course of time, the College has earned its own reputation in the State. The College initially was established with donation coming from the people of the locality which is well gatherable from the evidence on record and it's there in evidence that the foundation stone had been laid by the then Chief Minister, Dr. H.K. Mahatab. Several people, out of their own volition, had gifted away their lands for the purpose. Admittedly, several developments including constructions of permanent nature have been made by the Defendants-College in the College area in ceruse of time and for such long user, the suit land has stood as an integral and inseparable part of the campus of the College. In such state of affair in the field which has been prevailing for about six decades; this Court although answers the substantial questions of law against the Defendant-College, yet, bringing the justice, equity and good conscience into play, refrains from passing a decree directing the Defendant-College to vacate the possession of the suit land and feels inclined to grant monetary relief to the Plaintiffs by directing the Defendants-College to pay the same.

14. It being seen that the Plaintiff, prior to filing of the suit, by letter dated 01.05.1965, having offered to sale the suit land to the Defendants-College for a consideration of Rs.15,000/- (rupees fifteen thousand), the

Defendants-College, instead of responding to it, have sat silent for quite a long period till the filing of the suit and then having contested the litigation and lost in the suit, have gone on filing First Appeal and then this Second Appeal. The Plaintiff for the above has thus faced the sufferance being not able to enjoy the fruit of the litigation and now her legal representatives are carrying on the baton.

Taking a holistic view in the matter, in the fitness of things, the offered consideration of Rs.15,000/- (rupees fifteen thousand) for the suit land in the year 1965, being doubled in every seven years and the fraction being taken as a whole; the consolidation amount for the suit land payable by the Defendants-College to the Plaintiffs is assessed at Rs.72,80,000/- (Rupees Seventy Two Lakh and Eighty Thousand only). Accordingly, the Defendants-College is directed to pay a sum of Rs.72,80,000/- (Rupees Seventy Two Lakhs and Eighty Thousand only) to the Plaintiffs on or before 31.10.2022 failing which the same would carry interest @ 12% per annum with effect from 01.01.2023 till payment.

15. With the above modification to the decrees passed by the Courts below; the Appeal stands disposed of. No order as to cost.

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