

IN THE HIGH COURT OF ORISSA AT CUTTACK

RSA No.398 of 2005

In the matter of appeal under Section 100 of the Code of Civil Procedure assailing the judgment and decree dated 15.07.2005 & 23.07.2005 respectively passed by the learned District Judge, Keonjhar, in R.F.A. No.61 of 2004 setting aside the judgment and decree dated 25.09.2004 & 14.10.2004 respectively passed by the learned Civil Judge, Senior Division, Keonjhar in Title Suit No.54 of 2001.

Mina Mahanta

....

Appellant

-versus-

Srimati Mahanta & Others

....

Respondents

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

For Appellant

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M/s.S.K.Nayak-2, B.K.Rout,
Miss.A.Nayak & S.K. Lenka
(Advocates)

For Respondents

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M/s.G.Ch. Rout, P.K.Kundu,
B.S.Mohanty, S.R. Pani
(Advocates for R.1,2, 4 to 9)

CORAM:

MR. JUSTICE D.DASH

Date of Hearing : 12.07.2022 : Date of Judgment:18.07.2022

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 15.07.2005 & 23.07.2005 respectively passed by the learned District Judge, Keonjhar, in R.F.A. No.61 of 2004.

By the same, the Appeal filed by the Respondent Nos.1 & 2, being the unsuccessful Plaintiffs under section 96 of the Code has been

allowed and thereby the judgment and decree dated 25.09.2004 & 14.10.2004 respectively passed by the learned Civil Judge, Senior Division, Keonjhar in Title Suit No.54 of 2001 dismissing the suit filed by these Respondents Nos.1 and 2 (Plaintiffs) have been set aside and finally, the right, title, interest and these Respondents (Plaintiffs) over the suit land and their right to recover the possession of the same have been granted.

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 Plaintiffs' case is that the suit land originally stood recorded in the name of Dulal Mahanta, who is their ancestor and died prior to the 1927. He had two sons, namely, Padan and Makuru. Makuru predeceased his father Dulal leaving behind his only son Choudhury, who died thirty years before the institution of the suit survived by three sons, who are Defendant Nos.6 to 8. Padan said to have died fifty years before the Suit leaving behind three sons, namely, Jayram, Dhanu & one Niranjana, who has been arraigned as Defendant No.3. Parbati (Defendant No.4) is the only daughter of Jayram. Dhanu died twenty years prior to the suit leaving behind his widow (Plaintiff No.2), son (Defendant No.5) and Daughter (Plaintiff No.1).

The suit land measuring Ac.0.48 decimals corresponding to sabik plot no.743 has been recorded in the name of Sira Bindhani in the Hal Settlement Record. The Defendant No.2 is the son of Sira and Defendant No.1 is the purchaser of the suit land from Defendant No.2. It is further stated that after the death of Dulal, the land under sabik khata no.17 was mutated in the name of Padan and Choudhury, who possessed

the same separately as per their convenience without there being any partition in metes and bounds. During Hal Settlement, they divided the lands in suit khata in that partition, the suit land fell to the share of Dhanu which was under his possession as before.

Raibu Bindhani and Sira were blacksmiths. They shifted to the suit village and requested Dhanu to provide them shelter in the village so as to earn their living by working as blacksmith in the said village. Dhanu permitted Raibu and Sira to occupy a portion of the suit land by erecting a house over it for putting up their heads. It is next stated that during Hal Settlement Operation, said Sira gaining over the Settlement Authorities, somehow managed to get his name recorded in respect of the entire suit land. Such recording is said to be wholly erroneous and without any basis. It is stated that neither Sira nor his son Madhab had any title over the suit land nor this recording has not created title in their favour in so far as the suit land is concerned. Bindhani family left the suit village about ten years before the suit and thereafter the Plaintiffs' father demolished the house standing over the suit land and possessed the same. When the matter stood thus, sometime in the year 2001, the Defendant No.1 created disturbances in the possession of the Plaintiffs over the suit land asserting that she has purchased the same from the Defendant No.2. it is stated that Defendant No.2 had absolutely no right to transfer any interest in respect of the suit land and as such the sale deed executed by him in favour of the Defendant No.2 is stated to be illegal and void and not binding on the Plaintiffs. The Plaintiffs, having found their right and title for the aforesaid actions being cast with cloud, filed the suit seeking the reliefs, as aforesaid.

4. The Defendant Nos.1 and 2, in their written statement, disputed the title and possession of the Plaintiffs over the suit land. They denied

the story of induction of Sira and Raibu over the suit land being so permitted by Dhanu. They have stated that the ancestor of Madhab got the suit land in lieu of his service which he had rendered as blacksmith and as such in the Hal Settlement Records, the land has been recorded in the name of Sira and after his death, his son Madhab (Defendant No.2) having succeeded to the same, had transferred it to Defendant No.1. It is further stated that Defendant No.5 had instituted T.S. No.96 of 1999 to evict the Defendant No.1 from the suit land and he having lost the same, the Plaintiffs have made this next round of move.

5. On the above rival pleadings, the Trial Court has framed as many as five issues. Issue No.4, which concerns with the right, title, interest and possession over the suit land by the Plaintiffs and Defendant Nos.3 to 8, upon examination of the evidence and their analysis, has been answered by the Trial Court against the Plaintiffs that they do not have the right, title, interest and possession over the suit land in saying that it is the Defendant No.1, who has the title over the same by virtue of her purchase from Defendant No.2. Accordingly, the other issues being answered against the Plaintiffs, the suit stood dismissed.

6. The unsuccessful Plaintiffs, having carried the First Appeal, has been successful in obtaining the decree in their suit as prayed for.

7. The present Appeal has been admitted on 15.05.2006 to answer the following substantial question of law:-

“Whether the courts lower appellate court was justified in holding that the possession of the defendant no.2 on the suit land was permissive in nature and was never adverse to the original owner inspite of the relinquishment admitted by the plaintiff's ancestors; i.e, whether the possession of the

defendant no.2 became adverse after the relinquishment in his favour”

8. Learned counsel for the Appellant submitted that the First Appellate Court, without any justifiable reasons and taking erroneous view over the evidence without taking the settled position of law holding the field in mind, has set aside the finding of the Trial Court. He submitted that the conclusion of the First Appellate Court that the possession of the suit land by Defendant No.2 was permissive in nature and never adverse to the interest of true owner is unsustainable in the eye of law as in doing so, the most important feature appearing in the evidence that during the settlement operation, the ancestors of the Plaintiffs had admitted the factum of relinquishment of their interest over the suit land in favour of the ancestors of the Defendant No.2, which cuts the claim of the Plaintiffs over the suit property at its root has been erroneously ignored.

9. Learned counsel for the Respondents supported the findings of the First Appellate Court that the Defendants have failed to establish their right, title and interest over the suit land on both counts.

10. Keeping in view the above submission, I have carefully read the judgments passed by the Courts below. I have also gone through the pleadings and have perused the evidence.

11. It is not in dispute that the suit land belonged to the ancestor of the Plaintiffs, which has been stated by the witnesses examined from both sides and also finds place in the record of right (Ext.1)

The claim of the contesting Defendants is that the suit land had been given to Sira Bindhani in lieu of his service. D.W.1, who is none other than Defendant No.1, has deposed on oath that Jayram gave the

suit land to Sira and that has also been stated by other witnesses examined from his side.

The written statement reads that said land had been given by Dhanu to Sira in lieu of his service, which is thus inconsistent as to the giver. The Plaintiffs' claim is that Dhanu had permitted Sira to live there. All the witnesses have stated that it was a service tenure land and had been given to Sira in lieu of the service as blacksmith that he was rendering. The Hal Settlement Record (Ext.A) shows that the land has been recorded in the name of Sira. However, the earlier Record of Right (Ext.1) reflects the position that the ancestor of the Plaintiffs was the recorded tenant. It is not stated by the Defendants as to how and under what circumstance, the said land came to be recorded in the name of Sira in the Hal Settlement. In that view of the matter, on the face of the settled position of law, that recording in the settlement record does neither create nor extinguish the title of the true owner in respect of the said land, the contesting Defendants claim of right, title and interest basing upon the Hal Settlement Record (Ext.A) has been rightly refused to be accepted by the First Appellate Court.

12. Coming to the possession of the suit land, the witnesses examined from the side of the Plaintiffs have stated that Sira constructed a house over the suit land which was demolished by the father of Plaintiff No.2. The First Appellate Court has found the evidence on the question of physical possession of the property to be evenly balanced. In such state of affairs, keeping in view the rent receipts proved from the side of the Defendants (Ext.B/1 to B/4), the Amit report (Ext.F), the First Appellate Court did commit no mistake in holding that the Defendants are in physical possession of the same. Thus here when the antecedent title of the Plaintiffs over the suit land has been traced and the physical

possession of the Defendants over the suit land has been found, the First Appellate Court, in my considered view, has rightly proceeded to answer as to whether the contesting Defendants can be said to have perfected title over the suit land by way of adverse possession and thereby the title of the Plaintiffs has stood extinguished.

It may be stated that theory of relinquishment, as pleaded by the Defendants and is said to be the basis of recording of the suit land in the name of Sira in the Hal Settlement Record is not legally tenable. This is for the simple reason that Sira was a stranger to the family of the Plaintiffs and had no right of any sort over the suit property for the ancestors of the Plaintiffs or any of them to relinquish their/his interest over the suit land in favour of that Sira. In case of relinquishment, the person/s in whose favour relinquishment is made must have his/their right over the property to some extent, whatever little it may be so that the same would get enlarged by the relinquishment of the right over the same by other/s. A stranger to the family and the property cannot stand as the beneficiary under the relinquishment.

13. It is the settled position that mere possession of the property by a possessor for whatever length of time it may be, it does not give rise to a case of acquisition of title over the same by adverse possession. Besides the requirements that the possession must be open, peaceful and continuous and for upward of the period prescribed; the other ingredient is that there has to be exhibition of hostile animus by the possessor all through the said period of possession of the property in question and it must be to the knowledge of the true owner denying his title and the possessor must all through claim the title and ownership unto himself.

The First Appellate Court is seen to have made threadbare discussion of the evidence on record on the above score and having found that the contesting Defendants have failed to establish such a case of acquisition of their title over the suit land by adverse possession, has held that the Plaintiffs have the right, title and interest over the suit land and as such the right to possess the same. This Court notices no such infirmity with that finding, which is seen to have been based on proper appreciation of the evidence in the backdrop of the settled position of law holding the field. Therefore, it is said that the First Appellate Court is justified in holding that the contesting Defendants have not established their right, title and interest over the suit land by way of adverse possession and that there has been the extinction of the right, title and interest of the Plaintiffs over the suit land and as consequently their right to recovery of possession of the suit land from the Defendants.

In the wake of aforesaid, the substantial question of law stands emerged against the case/claim of the contesting Defendants, which in turn, runs to confirm the judgment and decree passed by the First Appellate Court in decreeing the suit of the Plaintiffs granting them the reliefs, as prayed for.

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

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

Basu