

IN THE HIGH COURT OF ORISSA AT CUTTACK

S.A. No.189 of 1995

In the matter of appeal under Section 100 of the Code of Civil Procedure assailing the judgment and decree dated 12.05.1995 and 23.06.1995 respectively passed by the learned Second Additional District Judge, Cuttack in Title Appeal No.22/19 of 1989/1990 confirming the judgment and decree dated 13.01.1989 and 04.02.1989 respectively passed by the learned Munsif, Second Court, Cuttack in Title Suit No.70 of 1982.

Lalatendu Keshari Ray & Others *Appellants*

-versus-

Nityananda Mohapatra & Others *Respondents*

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

For Appellants - Mr.B. Routray
(Advocate)

For Respondents - Mr.A.K. Dalai
(Advocate)

**CORAM:
MR. JUSTICE D.DASH**

Date of Hearing : 07.09.2022 : Date of Judgment:26.09.2022

D.Dash,J. The Appellants, by filing this Appeal under Section 100 of the Code of Civil Procedure, 1908 (for short, 'the Code'), have assailed the judgment and decree dated 12.05.1995 and 23.06.1995 respectively passed by the learned Second Additional District Judge, Cuttack in Title Appeal No.22/19 of 1989/1990.

By the same, the Appeal filed by the present Appellants, being the legal representatives of one Natabar Ray (Plaintiff), under section 96 of the Code has been dismissed. Thereby, the judgment and decree dated 13.01.1989 and 04.02.1989 respectively passed by the learned Munsif, Second Court, Cuttack in Title Suit No.70 of 1982 have been confirmed. Said Natabar Ray, the predecessor-in-interest of the present Appellants, filing the suit, i.e, T.S. No.70 of 1982, having been non-suited, these Appellants (Plaintiffs) have filed in that move before the First Appellate Court.

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 is that the suit land with some other lands were the self-acquired properties of one Gadadhar Ray, who happens to be the father of the original Plaintiff. Said Gadadhar is said to have leased out the suit land with other lands to the Plaintiff under a permanent lease deed dated 20.12.1943 for the purpose of cultivation. The Plaintiff remained in possession of the suit land as the leasee and continued to pay the rent to the Ex-Landlord and then to the State Government after vesting of the Estate. It is stated that Defendants 2 and 3 have no manner of right, title, interest and possession over the suit land and there were litigations in between the Plaintiff and the villagers in the year 1968. The Plaintiff, for the reason, was spending most of the time at Cuttack in looking after the litigation when the Defendants 2 and 3 were staying in the village. It is stated that during that period, the Defendant No.1 developed friendship with Defendants 2 and 3 and obtained a registered sale deed from them on 06.05.1968 in respect of

the suit land providing an assurance that he would resist the villagers from their interference in possession of the suit land and other lands. The Plaintiff claims that the said sale deed is a nominal one and no consideration had passed for the same and that it had never been given effect to. He further stated that the Defendants, in order to keep it secret and to see that the same was not known by the Plaintiff, had registered the sale deed at Sub-Registrar's Office, Jagatsinghpur although the suit property situated within the jurisdiction of Debidol Sub-Registrar. It is further stated that in order to bring it within the jurisdiction of Sub-Registrar, Jagatsinghpur, some imaginary property situated within the jurisdiction of Jagatsinghpur had been included in the schedule given to the said sale deed. The Plaintiff's case is that Defendants 2 and 3 were neither the owners nor in possession of the suit land. So, the registered sale deed dated 06.05.1968 is said to be void. It is further stated by the Plaintiff that he has been in possession of the suit property all along and as such, has been recognized as a tenant under the Ex-Landlord by the State Government after the vesting. When it was known that the registered sale deed is casting a cloud over the right, title, interest and possession of the Plaintiff over the suit land, the suit came to be filed.

4. The Defendants 2 and 3 supported the case of the Plaintiff.

The Defendant No1., while traversing the plaint averments, has pleaded that the Plaintiff had never been granted with the permanent lease of the suit land on 20.12.1943 by Gadadhar and he has never been in possession of the suit land. According to him, the lease deed dated 20.12.1943 is not a genuine one and it has been created for the purpose of the case. It is his case that the said lease deed is a fake and is the outcome of an act of forgery. It is stated that Defendants 2 and 3, Gouranga Prasad Ray and Nikhil Prasad Rout were the tenants in

respect of the suit land long before the abolition of Ex-Intermediary interest and the Plaintiff as the Ex-Landlord had submitted rent roll to the Anchal Administration in their favour in respect of the suit land after vesting of the Estate by operation of the Orissa Estate Abolition Act. However, despite submission of the rent roll, the ledger remained in the Office of the Tahasildar in the name of the Plaintiff and others as sub-proprietors in respect of the disputed land appertaining to Lot No.1 of the schedule given in the plaint and it had not been corrected by mistake and continued as such. So, the Defendant No.1 initiated a Misc. Case No.9 of 1982-83 for correction of the rent roll. The Tahasildar, calling for a report from the Revenue Inspector and Revenue Supervisor, although was satisfied about the irregularity in the maintenance of the rent roll, did not proceed further in view of the pendency of the suit. It is stated that Defendant No.1 purchased the suit land by way of registered sale deed on 06.05.1968 from Defendants 2 and 3 whose name stood recorded as occupancy right as per the rent roll maintained in Jagatsinghpur, Tahasil. These Defendants 2 and 3 were paying the public charges regularly. The Defendant No.1, being the bona fide purchaser for value in good faith, further claims protection under section 41 of the Transfer of Property Act. It is the case of Defendant No.1 that the land under plot no.903 having an area of Ac.0.14 decimals at Village-Rasulpur originally belonged to Nityananda Mohanty and Chaitan Mohanty, who had orally sold Ac.0.04 decimals out of said plot to Defendants 2 and 3 about twenty-five years prior to the suit and the Defendants being in possession of the same, sold Ac.0.01 decimals of land out of that plot to Defendant No.1 along with the disputed property and since purchase of the suit land by Defendant No.1, he is in continuous and peaceful possession of the suit land as was so recorded

with the said land in the present settlement. The Defendant No.1 claims to be regularly paying the rent for the disputed land. It is alternatively said that the Defendant No.1, by virtue of his open, peaceful and continuous possession of the suit land as of right from the date of purchase, has acquired title over the same by way of adverse possession.

5. On the above rival pleadings, the Trial Court framed in total seven issues. The issue no.5 as to the claim of the Plaintiff having the right, title and interest over the suit land, upon examination of the evidence and their evaluation, has been answered in holding that the Plaintiff has failed to prove his claim of right, title, interest and possession over the suit land. Next, coming to issue no.6 with regard to the right, title and interest over the said land as claimed by Defendant No.1, the Trial Court, having held the sale in favour of Defendant No.1 to be void, has, however, found that the Defendant No.1 has established his alternative case of acquisition of title over the suit land by way of adverse possession. Accordingly, the suit stood finally dismissed.

6. The legal representatives of the original Plaintiff having filed the Appeal, have failed in that move.

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

“i. Whether the courts below are justified in their adjudication with regard to the claim of acquisition of title by way of adverse possession in favour of Defendant No.1 without an issue being framed in that regard.”

8. Learned counsel for the Appellants submitted that even though it was the alternative case of the Defendant No.1 that he has perfected title over the suit land by way of adverse possession by remaining in

possession of the property in an open, peaceful manner and continuously for upward of the period prescribed, no issue being framed to that effect, the Courts below have committed the mistake in recording a specific finding to that effect. He further submitted that even on merits, the Courts below ought not to have returned, such a finding which is against the weight of evidence on record and contrary to the settled principles of law holding the field.

9. Learned counsel for the Respondents supported the findings of the Courts below. According to him, when the Courts below had framed an issue as to whether the Defendant No.1 has the right, title, interest and possession over the suit land in answering that issue, the alternative case of the Defendant No.1 being taken up for consideration and decided no such prejudice can be said to have been caused to the Plaintiff as he was well aware of such a plea being taken in the written statement. He further submitted that both sides when have led extensive evidence on that score, it cannot be said to be a surprise to the Plaintiff in that way claiming any prejudice for such non-framing of issue.

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. The evidence both oral and documentary have also been perused.

11. The Courts below have held that the Defendant No.1 has acquired title over the suit land by virtue of adverse possession in remaining in possession of the same for upward of 12 without any interruption from any quarter as its owner exhibiting hostile animus. The Defendant No.1 has placed his case that by virtue of Ext.C, the sale deed executed by Defendants 2 and 3 in respect of the suit land, he came to possess the

same. The Courts below have found this Ext.C to be an invalid document. The Defendant No.1 has proved Exts.D & E, which are the final record of right and parcha issued in the Hal Settlement Operation in respect of the suit land. He also proved rent receipt vide Ext-F series. The Plaintiff, while admitting the execution of Ext.C by Defendants 2 and 3, has stated to have come to know about the same on 03.04.1982. It is, however, stated that when he enquired about the same, the Defendant No.1 threatened him to dispossess. The Defendant No.2 has examined himself as a witness on his behalf. He states that in fact the Plaintiff had the knowledge about the Ext.C much prior to the date which he has stated and that is after about six to seven years of execution of the sale deed and then he had abused him as to how he could sale the same which he should not have done. It is also stated by this witness that the Plaintiff filed a case in the Settlement Court against Defendant No.1 and the Plaintiff was looking after the Settlement Operation. This has been admitted by the Plaintiff himself. The objection petitions have been proved as Ext.A where the Plaintiff has himself stated that the suit land is going to be recorded in the name of Defendant No.1 which should not be done. Therefore, the Courts below having found that the Plaintiff was lying also when he came to know about Ext.C, i.e., only on 03.04.1982, this Court finds no such reason or justification to express any disagreement.

The Trial Court, on appreciation of evidence on record, appears to have rightly found that the possession of the suit land had been delivered to Defendant No.1 and he making an entry over the same, remained in possession. The D.W.1 Hariprasad has also admitted that about five years before he asked Nityananda to return the land when he refused to do so. So, from that, the physical possession of Defendant No.1 over the

suit land being found by the Courts below, there surfaces no infirmity so as to interfere. Such evidence which finds support from the documents (Exts.D, E and F), on the face of the evidence that Defendant No.1 claiming the ownership over the property remained in possession, all the ingredients as regards acquisition of title by way of adverse possession being so found by the Courts below, this Court finds the same to be well in order. This was the alternative case of Defendant No.1 in his written statement and the Court was deciding the question as to the competing claim of right, title, interest and possession over the suit properties by the parties. Thus under the circumstance, when parties have led extensive evidence as to their rival claim and possession, the non-framing of a specific issue as to acquisition of title by way of adverse possession over the suit land by Defendant No.1 is of no such legal significance so as to hold that for the same, the judgments and decrees passed by the Courts below are vulnerable.

12. The substantial question of law being accordingly answered, the Appeal stands dismissed. There shall, however, be no order as to cost.

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

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