

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

**S.A. No.258 of 1995**

In the matter of appeal under Section 100 of the Code of Civil Procedure assailing the judgment and decree dated 22.08.1995 and 07.09.1995 respectively passed by the learned Additional District Judge, Bhubaneswar in Title Appeal No.34 of 1992 confirming the judgment and decree dated 28.09.1992 and 20.10.1992 respectively passed by the learned Munsif, Bhubaneswar in T.S. No.77 of 1990-I.

----

***Smt. Santilata Kanungo (Since Dead) by her LRs*** ..... ***Appellants***

-versus-

***Nrusingha Ch. Das & Another*** ..... ***Respondents***

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

***For Appellants*** - Mr.S. Mantry,  
(Advocate)

***For Respondents*** - Mr.Tanmay Mishra, Advocate  
Mr.D.K. Mishra, Advocate

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

**Date of Hearing : 11.08.2022 : Date of Judgment:20.10.2022**

***D.Dash,J.*** The predecessor-in-interest of the present Appellants as the sole Appellant, by filing this Appeal under Section 100 of the Code of Civil Procedure, 1908 (for short, 'the Code'), had called in question the judgment and decree dated 22.08.1995 and 07.09.1995 respectively passed by the learned Additional District Judge, Bhubaneswar in Title Appeal No.34 of 1992.

By the said judgment and decree, the Appeal filed by the sole Appellant of this Appeal (since dead) under section 96 of the Code had been dismissed and thereby, the judgment and decree dated 28.09.1992 and 20.10.1992 respectively passed by the learned Munsif, Bhubaneswar in T.S. No.77 of 1990-I in dismissing the suit filed by the sole Appellant (since dead), as the Plaintiff, has been confirmed.

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 one Narayan Mohapatra was the recorded owner of the suit property as shown in the schedule of the plaint and he was in possession of the same in the year 1958. It is stated that Narayan had accepted the Plaintiff as his daughter and he was treating the Plaintiff as such. So, he gifted away the property to the Plaintiff orally in the year 1958. Since then, the Plaintiff claims to be in possession of the suit property. When some time in the year 1992, the Defendants, without having any manner of right, title and interest over the said property, threatened to damage the suit house standing over the suit land under the occupation of the Plaintiff and her family members so as to drive them out, the suit came to be filed.

4. The Defendants, in their written statement, admitted that said Naarayan Mohapatra was the erstwhile title holder of the property in the suit. It is their case that he had sold the suit land to Defendant No.1 by registered sale deed dated 16.05.1960. Pursuant to the said sale, the possession of the suit property, being delivered by Narayan Mohapatra to Defendant No.1, he has been in possession of the same. It is further stated that when Defendant No.1 intended to construct the house over

the suit land, he submitted a plan as required under the local law for approval of the Bhubaneswar Notified Area Council as it was then in the year 1962. The plan, being sanctioned, he, being a Government servant, obtained loan from the Finance Department under the Housing Loan Scheme. He completed the construction of the house, which was assigned with holding number and then assessed with holding tax. It is stated that the husband of the Plaintiff was working in Police Department and he was inducted as a tenant in respect of the house over the suit land. It was agreed that he would be paying monthly rent of Rs.500/-. The tenancy commenced in the year 1985 and continued as such. The Plaintiff's husband, being a Government Servant, was drawing house rent allowance from the Government. It is stated that the husband of the Plaintiff forcibly constructed a cowshed on a portion of the land of Defendant No.2, which she had purchased from Defendant No.1. The Plaintiff's husband did not pay house rent regularly. So, for his eviction, the suit was filed which then at the time of submission of the written statement in the present suit was pending. It is stated that the Plaintiff has no right, title and interest over the suit property and she was never in possession of the same and her occupation was with her husband who was the tenant.

5. On the above rival pleadings, the Trial Court has framed as many as twelve issues. On examination of the evidence and upon their evaluation on the core issues, the Trial Court has held that the suit property was never gifted to the Plaintiff by that Narayan Mohapatra orally and the Plaintiff has not acquired any title over the suit property by way of adverse possession. In view of the above, the Trial Court has dismissed the suit.

The First Appellate Court, sitting over to examine the sustainability of the above findings, appears to have re-appreciated the evidence let in by the parties in great detail in the backdrop of the rival case projected in their respective pleadings.

At the end of the exercise so undertaken, the First Appellate Court has affirmed the findings returned by the Trial court and that has led to the confirmation of the result of dismissal of the suit.

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

“Whether the First Appellate Court has properly addressed with regard to the issue relating to adverse possession.”

7. Learned counsel for the Appellants submitted that the finding of the First Appellate Court by affirming the finding of the Trial Court that the Plaintiff has failed to establish her case of acquisition of title over the suit land by way of adverse possession is not only contrary to the evidence on record and against the weight of the same but also run in opposition to the settled principles of law holding the field. He submitted that with all the required ingredients to establish a case of adverse possession having been established through clear, cogent and acceptable evidence, the First Appellate Court has erred both on fact and law in negating the Plaintiff's claim.

8. Learned counsel for the Respondents, on the other hand, submitted all in favour of the findings returned by the Courts below. According to him, the concurrent finding of fact relating to non-establishment of all the required ingredients for fructification of a claim of acquisition of title over the suit property by way of adverse possession is not liable to be interfered with as there surfaces no such

perversity with the same. He submitted that on the face of the settled principles of law that in seisin of a Second Appeal, even though this Court is of a different view, yet without finding any such perversity in the matter of appreciation of evidence, the concurrent view are not liable to be set aside. According to him, the Courts below have rightly declined to accept the claim of the Plaintiff that she has acquired title over the suit property by way of adverse possession.

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 as well as the evidence let in by the parties.

10. The Plaintiff's case is that the suit land had been orally gifted to her by Narayan Mohapatra, who is the owner of the property. Both the Courts below, on examination of the oral evidence, have concurrently found that there has been failure on her part to prove the factum of gift. It has also been rightly said that the same is not to be recognized as such in the eye of law being not supported by any registered instrument as mandated in law. The Courts below, assigning very good reasons, upon detail discussion of evidence from all possible angles, are not found to have erred at any stage in concluding that the case of the Plaintiff that she was gifted with the property in suit by that Narayan. Having said so, rightly going to examine the evidence of the Defendants that the suit land has been purchased by Defendant No.1 under Ext.B, which is the registered sale deed executed by Narayan, the finding given in favour of the Defendants that they have acquired title over the suit property by said purchase is not liable to be interfered with. The very source of the claim of the Plaintiff having been disbelieved on fact and also having no legal base when the same is claimed as the basis of making the entry to

the property in question, the claim laid by the Plaintiff merits no acceptance. This Court on going through the evidence, when finds no such justifiable reason to hold the same view to be perverse so as to be in a position to set aside the same and when the title over the said property has been held to have passed on to the hands of the Defendants by virtue of their purchase, which was not so disputed by the Plaintiff, the claim of the Plaintiff that she has acquired title over the suit land by way of adverse possession, goes without any legal foundation.

Next, even on merit of the claim of acquisition of title over the suit land by adverse possession, the evidence on record, being gone through, this Court finds that the classical requirements for establishment of a claim of adverse possession, i.e., '*nec vi*', '*nec clam*' and '*nec precario*' have not been established. The Plaintiff's possession over the suit property even if accepted under the circumstance, as reveals from the evidence let in from her side, cannot be said to be in exercise of all the rights of ownership in denying the title of the true owner, i.e., Narayan and then the Defendants, who are the purchasers from said Narayan by exhibiting hostile animus although.

For all the aforesaid, the substantial question of law is answered accordingly and that leads to dismiss of the Appeal.

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

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

Basu