

IN THE HIGH COURT OF ORISSA AT CUTTACK

SA No.124 of 1997

In the matter of appeal under Section 100 of the Code of Civil Procedure assailing the judgment and decree dated 17.01.1997 and 28.01.1997 respectively passed by the learned District Judge, Balasore-Bhadrak, Balasore in S.J. Appeal No.46 of 1992 setting aside the judgment and decree dated 11.08.1992 and 26.08.1992 respectively passed by the learned Additional Subordinate Judge, Balasore in O.S. No.5/35 of 1987-I/1981.

Panchanan Panda & Others* *Appellants

-versus-

Ramanath Das & Others* *Respondents

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

***For Appellants* - Mr.Raghunath Das
(Advocate)**

***For Respondents* - Mr.S.K. Jee
(Advocate)**

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

Date of Hearing : 18.07.2022 : Date of Judgment:25.07.2022

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 17.01.1997 and 28.01.1997 respectively passed by the learned District Judge, Balasore-Bhadrak, Balasore in S.J. Appeal No.46 of 1992.

By the same, the Appeal filed by the Respondents 1 to 6 under section 96 of the Code has been allowed and thereby the judgment and decree dated 11.08.1992 and 26.08.1992 respectively passed by the learned Additional Subordinate Judge, Balasore in O.S. No.5/35 of 1987-I/1981 have been set aside and these Appellants (Plaintiffs) have been non-suited.

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. It is the case of the Plaintiffs that Srinibas Panda and his two brothers are the members of the joint family. Srinibas died in the year 1937 when all the members of the family were in joint mess and estate. He died leaving behind his widow Rebati, who died in the year 1977. Srinibas had no issue. His other brother Kandarpa died in the year 1953 and Chintamani, who is another brother of Srinibas, being alive, is Plaintiff No.2 in the suit. It is stated that sometime in the year 1953, Rebati filed a suit against Kandarpa and Chintamani claiming maintenance and it stood numbered as O.S. No.34/26 of 1955-53. The suit was decreed and in execution of the same, she got Ac.10.18 decimals of land in the Court auction. She sold the said properties to different persons. The property measuring Ac.1.68 decimals have been sold to Kalyani Panda and Mrutyunjaya Panda, who in turn, sold the same to Defendant No.2, Defendant No.6 and father of Defendant No.7 (ka) and Defendant No.8 by registered sale deeds. Since she had no right and title over those properties, it is said that those sales are invalid and those are also void not only for being without consideration but also for having been obtained fraudulently. It is also stated that the Defendants

influenced the Settlement Authorities and got the suit properties recorded in their names on the basis of fake and illegal sale deeds. The Plaintiffs, therefore, filed the suit claiming the right, title, interest and possession over the suit properties with alternative relief that in case of dispossession, they be restored with the possession.

4. The Defendants have stated in their written statement that Rebati Dibya, the widow of Srinibas, was in possession of the properties. It is stated that her husband was separate in mess and estate from his other brothers, namely, Kandarpa and Chintamani. They stated that by virtue of execution of registered sale deeds by Rebati in their favour, they have been conferred with right and title over the suit properties as the purchasers for valuable consideration. In the alternative, it is stated that having remained in possession of the properties for all these years, they too have perfected title over the same by adverse possession.

5. On the above rival pleadings, the Trial Court having framed ten issues, has arrived at a conclusion that Rebati had no interest over the suit property nor she was in possession of the same. It has also been held that she had relinquished her claim over the properties in favour of two brothers of her husband, namely, Kandarpa and Chintamani, which has been held as gift. Having called for the original case record of O.S. No.34/26 of 1955-53, the Trial Court has straight away admitted in evidence, the compromise petition filed therein as Ext.1. The plaint, written statement and deposition of Rebati have been admitted as Ext.2, 3 and 4 respectively. These documents have been relied upon to record the findings as aforesaid.

The First Appellate Court being moved by the aggrieved Defendants, upon re-appreciation of evidence, has annulled the findings returned by the Trial Court.

6. Learned counsel for the Appellants submitted that the First Appellate Court has unjustifiably the well reasoned findings recorded by the Trial Court, which is not only against the weight of evidence on record but also by erroneous application of settled position of law. He submitted that the Trial Court, while adjudicating the dispute, having called for the record of the earlier suit, when has taken into account the documents available therein, no such infirmity can be said to have arisen therefrom and the Trial Court, therefore, relying upon those, when has answered the issues in favour of the Plaintiffs, the First Appellate Court is not right in unsettling the same. He, therefore, urged for admission of this Appeal to answer the above as the substantial questions of law.

7. Learned counsel for the Respondents, on the other hand, assisting the Court in the matter of admission hearing, supported the findings recorded by the First Appellate Court. According to him, the Trial Court, having taken the inadmissible evidence into account when had rendered the findings, the First Appellate Court, finding the gross illegality therein, has rightly overturned the same.

8. Keeping in view the submissions made, I have carefully gone through the judgments passed by the Courts below.

9. It appears from the record that the Trial Court having called for the case record of O.S. No.34/26 of 1955-53 has straight away admitted the document found therein into evidence without giving any opportunity or scope to other side to explain the circumstances. These

documents, i.e., the compromise petition (Ext.1), the plaint, written statement, Exts.2 and 3 respectively have not been proved in accordance with law. The deposition of that Rebati in that suit (Ext.9) having been admitted in evidence, no such opportunities have been provided to the adversary to put up any explanation. These records being excluded from evidence, the finding cannot be that Rebati had surrendered the entire estate of her husband in favour of Kandarpa and Chintamani. Therefore, the First Appellate is found to have committed no mistake in setting aside the finding of the Trial Court in the above score.

On the question of possession of the properties by the parties, Rebati having sold her properties which she purchased in the Court auction measuring Ac.10.18 decimals to different persons those have not been challenged by the Plaintiffs. The only challenge in the suit is to the property measuring Ac.1.68 decimals in contending that the same was never possessed by Rebati at any point of time and thus she could not have transferred the same in favour of the Defendants. The Plaintiffs have failed to show as to the extent of property she got in execution of the decree that had been passed against Kandarpa and Chintamani. The First Appellate Court has examined the evidence of P.W.1, who is Plaintiff No.1(Ka), the son of original Plaintiff Kandarpa. His evidence is not definite about the possession of anyone over the properties when he has stated that Chintamani and Kandarpa stayed jointly, it is further stated by him that they were residing in separate house having separate holding number. No document has been proved to show that Srinibas, the husband of Rebati died while being in jointness with his other two brothers, namely, Kandarpa and Chintamani. In addition to this, the names of Defendants 5 and 6 have been recorded in respect of the land in the Major Settlement Record of Rights. The purchasers of the

properties, i.e., Defendants 1 and 4, 2 and 3 have also been so recorded in the Major Settlement Record of Right. From that, the presumption of possession of land in their favour has to be drawn. The Plaintiffs are not coming forward with any explanation as to why they did not challenge those recordings in proper time. Going through the evidence on record, the First Appellate Court has also come to a conclusion that there is no specific proof as to in which year Srinibas died. Next, analyzing the evidence of P.W.2, an adjoining tenant, upon detail discussion of the same, the First Appellate Court has held his evidence to be of no help to the case of the Plaintiffs in establishing the possession of the suit properties. The transfer of the suit land by Rebati being in the year 1973-74, she has died in the year 1977 and the present suit has come to be filed in the year 1981, i.e, after lapse of seven years.

In view of all these, the First Appellate Court, having taken a view that the evidence of possession of the suit properties as adduced by the Defendants stands on a higher footing than the evidence adduced by the Plaintiffs and as such, the balance of probability on that score leans in favour of the Defendants, this Court finds no such reason to accord any disapproval to the same. Even coming to the validity of the compromise deed (Ext.1), the First Appellate Court, having applied the principles of law set out in case of Bhoop Singh –V- Ram Singh Major and Others; AIR 1996 SC 196 is found to have rightly held that thereby no right can be said to have accrued in respect of the suit land in favour of the reversioners, i.e., the heirs of the husband of Rebati.

In view of all the aforesaid, this Court is of the view that there arises no substantial question of law for being answered by admitting this Appeal.

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

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



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