

HIGH COURT OF ORISSA : CUTTACK

SA No.82 of 1986

In the matter of an appeal under section 100 of the Code of Civil Procedure assailing the judgment and decree 18.02.1986 and 03.03.1986 respectively passed by the learned Sub-Ordinate Judge, Khurdha in Title Appeal No.02 of 1985 confirming the judgment and decree dated 15.03.1985 and 28.03.1985 respectively passed by the learned Munsif, Khurdha in O.S. No.102 of 1982.

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Raghunath Mohapatra

.... Appellant

-:: VERSUS ::-

***Khali Rana (since dead)
through his LRS & Ors.***

.... Respondents

***Appeared in this case through Hybrid Arrangement
(virtual/physical mode)***

For Appellant

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Mr. D.N. Mohapatra,
M.R. Pradhan, J. Barik,
P.K. Singhdeo,
(Advocates)

For Respondents

::::

Miss Samapika Mishra,
Addl. Standing Counsel, (R-11)
Mr. B.C. Mohanty,
(Advocate for R-1 to 10)

CORAM:

MR. JUSTICE D.DASH

Date of Hearing:01.08.2022 :: Date of Judgment:08.08.2022

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 18.02.1986 and 03.03.1986 respectively passed by the learned Sub-Ordinate Judge, Khurdha in Title Appeal No.02 of 1985.

By the same the Appeal filed by the present Appellant (Plaintiff) under Section 96 of the code has been dismissed and thereby, the judgment and decree dated 15.03.1985 and 28.03.1985 respectively passed by the learned Munsif, Khurdha in O.S. No.102 of 1982 have stood 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. Plaintiffs case is that he is the owner in possession of the suit property which is the subject matter of the suit.

The Plaintiff having applied for lease of the suit land which was lying fallow was so granted by the Tahasildar, Banapur in Lease Case No.647 of 1975. It is stated that such lease had been granted by the Competent Authority by observing all the required legal formalities. After the grant of such lease the records were accordingly corrected. The Plaintiff got the possession of the suit land. It is pleaded that the Plaintiff has thus the right, title and interest over the suit land and has been paying the rent being recorded as Sthitiban Raiyat over the same. It is also stated that he has been paying the rent as to the State as has been assessed. The Defendants being envious of such grant of lease of the suit land in favour of the Plaintiff created disturbance in his peaceful possession over the suit land. It is stated that the Defendants mischievously filed an Application before the Divisional Officer, Khurda for cancellation of lease by making some false and frivolous allegation against the Plaintiff. It is stated that the Plaintiff having thus got the occupancy the right over the property in question; the Defendants have nothing to do with the same. Alleging that on 01.09.1982, the Defendants came and damaged the crop raised by the

Plaintiff over the suit land, when that invited strong apprehension in the mind of the Plaintiff that the Defendants would be again proceeding in the matter by taking law into their own hands, the suit has come to be filed. It maybe stated here that the Plaintiff besides arraigning those persons creating disturbance in possession of the property as Defendants has also impleaded the State of Orissa (Respondent No.11) as Defendant No.11.

4. The Defendants Nos. 1 to 10 in their written statement have questioned the right, title and interest of the Plaintiff over the suit property. They claim that they are in possession over the suit property since the time of their ancestors for more than 30 years prior to suit and as such they have acquired title over the said property by way of adverse possession. The Defendants thus, state that the Plaintiff is not entitled to the reliefs claimed. It has been further stated that the lease in question which is projected by the Plaintiff to be the source of his right, title and interest over the property is the outcome of the fraudulent activities at his part in collusion for other Authorities of the State. They have stated that the suit land originally was waste land belonging to the State and the ancestors of the Defendants had reclaimed it by converting it fit for cultivation and they having amalgamated the suit land with their own Raiyati land have been in occupation of the same. The lease is said to be invalid and inoperative in the eye of law. It is further stated that the Defendant Nos.1 to 5 and 8 to 10 along with their other brothers belong to one family and during the time of their ancestors they had divided and now they constitute two families. According to them, the Defendant No.6 is in possession of Ac. 0.272 decimals of land from this suit plot under one Kita since the time of his ancestors and Defendant Nos.5 and 8 along with their brothers Ravi and Dhoba are in possession of Ac. 0.380 decimals of land from the middle of the suit plot making it five

Kitas. Out of these five Kitas, two are amalgamated with the western portion of plot No.689 which they could not divide and partition made by their ancestors. Similarly, the Defendant Nos.1, 2, 3, 4, 9 and 10 along with their brothers, namely, Godavari, Pabana, and Laxmidhara are possessing the rest Ac.0.525 of decimals of the suit land from the west by making into six Kitas out of which, the western Kita is amalgamated with their plot No. 531 and another Kita has been amalgamated with the western portion of plot No. 689 for last 30 years prior to the suit land. They state that the Plaintiff had never come to possess the suit land at any point of time. The Defendants have stated they have been also acquired title over the suit property as against the Plaintiff as well as the State of Orissa by virtue of their long possession.

5. The State of Orissa being Defendant No.11 has not contested the suit by filing the written statement.

6. On the above rival pleadings, the Trial Court framed 10 issues. Proceeding rightly to first answer issue No.7 which concerns with the validity of the lease, the Trial Court having gone through the record as well as the evidence has found the same in favour of the Plaintiff holding the Plaintiff to be the lease holder in respect of the said land and as such to have acquired right, title and interest over the property. Then going to answer the issue relating to the possession of the property as claimed by the Plaintiff and refuted by the Defendants, who claim that unto themselves; it has been said that the evidence on record are not sufficient to conclude that the Plaintiff is in possession of the suit property. The other issue i.e. issue No.8 concerning the amalgamation of the suit by the Plaintiff with their other lands, it has been held that the evidence on record lead to answer on that score against the Plaintiff. Having said as above, the issue relating to the claim of the Defendants

as to have acquired title over the suit property by way of adverse possession has been returned against them.

With the above findings, the Trial Court has decreed the suit in part. The Trial Court, while declaring the title of the Plaintiff over the suit land, his prayers for restoration of possession and permanent injunction as against the Defendants have been declined.

7. The Plaintiff being aggrieved by the aforesaid decision of the Trial Court having carried the First Appeal has been unsuccessful.

8. The present appeal has been admitted by an order dated 24.06.1986 to answer the substantial question of law, as stated hereunder.

On the finding, there is no adverse possession, the Defendants are trespassers. Their claim is that they are in possession of specific portions of the suit land, where all the trespassers of the other portions of the suit land are necessary parties to the suit.

9. Mr. D. Mohapatra, learned counsel for the Appellant submitted that when the Courts below have concurrently found that the Plaintiff is the lawful owner of the suit land having right, title and interest over the same by virtue of the lease granted to him by the State and when the claim of the Defendants as to have acquired title over the suit land by way of adverse possession has been held in the negative merely basing upon the pleading in the written statement, the Courts below are not right in refusing to grant relief of recovery of possession and permanent injunction to the Plaintiff as prayed for. In this connection, he has invited the attention of the Court to the relevant averments taken by the Defendants in their written statement. He therefore, submitted that the Courts below ought to have decreed the suit granting all the reliefs to the Plaintiff as prayed for.

10. None appeared on behalf of the Defendants despite service of notice and repeated opportunity.

11. Learned counsel for the State submitted that in this suit the Defendants-state has advanced in competing claim over the suit property and it was also not so contended before the First Appellate Court.

12. Keeping in view the submission made, I have carefully read the judgments passed by the Courts below. I have also perused the plaint and the written statement as well as the evidence on record.

The position emerges that here the Trial Court as well as the First Appellate Court have concurrently held the Plaintiff to have obtained the suit land by virtue of the lease granted by the Competent Authority of the State-Defendant No.11. It is thus been held that the Plaintiff has the right, title and interest over the suit land. This obviously means that the Plaintiff on the basis of that has the right to possess the suit land. The Plaintiff in the pleadings has sought for the relief of declaration of his title and permanent injunction; in the alteration for recovery of possession if found to be not in possession of the suit property.

The Defendants specific case in the written statement is that they are in possession over the suit property since the time of their ancestors for more than 30 years prior to the suit and as such they have acquired title over the said property against the Plaintiff as well as the Defendant No.11 (State) by way of adverse possession. It is next stated that the Defendants being the members of the family have divided the suit property into different parts and are in possession of the same. It is pertinent to state here that during suit, an Amin Commissioner has been examined as D.W.1. His report has been admitted in evidence and marked as Ext.3. It has been indicated in the report that the Defendants

have amalgamated some portion of the suit land with other plots of their land adjoining to it.

13. The findings with regard to the right, title and interest over the suit property and as such the right to the possess the same as has been rendered by the Trial Court has not been questioned by the Defendants in the First appeal. The said First Appeal had been filed by the Plaintiff in challenging the denial of the relief of possession and permanent injunction. To be more specific, Defendants had neither filed cross objection nor cross appeal nor even have raised any contention in questioning the concurrent finding of the Trial Court on that issue which has gone in favour of the Plaintiff. The First Appellate Court having taken a cue from the evidence adduced by the Defendants that they with their brothers are in possession of the suit land, has held that those brothers being necessary parties to the suit have not been so impleaded/arraigned. Therefore, it has said that in their absence, the relief of recovery of possession and permanent injunction as prayed for by the Plaintiff cannot be granted.

14. The conclusion as aforesaid appears to have been rendered without taking into account the averment taken by the Defendants in their written statement. It is their specific case that since the time of their ancestors, they have been possessing the suit land and later on they have divided it and have been possessing the same by amalgamating those with their own land adjoining the suit land. The fact remains here that the Defendants have not proved any such document in establishing the fact that they had partitioned their ancestral joint family properties in metes and bounds. In that view of the matter, the possession of separate portion of ancestral joint family property by the Defendants has to be taken as merely for convenience and nothing more. So the Defendants

having stated that with them their other brothers namely, Rabi, Dhoba, Halu, Laxmidhar and Paban are also possessing the properties, the same makes no such difference and is of no such legal significance in saying that they are independently possessing those portion of land from out of the suit land. Be that as it may if those persons are not the parties to the suit, their right over the property are not going to be affected in any way and even though the decree for possession is passed in favour of the Plaintiff, they can very well raise their claim as per law when the very decree for possession and permanent injunction are put for execution. In that view of the matter, in my considered view, the Courts below ought not to have refused to grant the relief of the possession and permanent injunction as prayed for by the Plaintiff in so far as the suit land is concerned as against these Defendants whose claim over the suit property as to have been so acquired by way of adverse possession as asserted has been repelled.

15. The aforesaid discussion and reasons thus provide the answer to the substantial question of law that the Plaintiffs suit ought to have been decreed granting him all the reliefs which he had prayed for. Accordingly, the suit filed by the Plaintiff is hereby decreed in declaring his right, title and interest over the suit property and holding him to be entitled to possess the same in getting the possession of the suit land recovered from the Defendants and those Defendants are also permanent restrained from creating any disturbance in the possession of the Plaintiffs over the suit property.

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

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