

IN THE HIGH COURT OF ORISSA AT CUTTACK

RSA No.8 of 2008

In the matter of an appeal under section 100 of the Code of Civil Procedure assailing the judgment and decree dated 13.07.2005 and 29.07.2005 respectively passed by the learned Additional District Judge, Sonapur in R.F.A. No.50 of 2003 confirming the judgment and decree dated 23.07.2003 and 08.08.2003 respectively passed by the learned Civil Judge (Senior Division), Sonapur in T.S. No.65 of 2000.

Ranka Mahakur

....

Appellant

-versus-

Kausalya Parida & Others

....

Respondents

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

For Appellant - M/s.D.P. Dhal, B.B. Mishra,
A.K. Mishra and K. Dash

For Respondents -

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

Date of Hearing & Judge: 04.01.2022

D. Dash, J. The Appellant by filing this Appeal under Section 100 Civil Procedure Code (for short, 'the Code'), has assailed judgment and decree dated 13.07.2005 and 29.07.2005 respectively passed by the learned Additional District Judge, Sonapur in R.F.A. No.50 of 2003.

By the said judgment and decree, while dismissing the First Appeal filed by the present Appellant-Plaintiff under Section 96 of the Code, the First Appellate Court has confirmed the judgment and decree dated 23.07.2003 and 08.08.2003 respectively passed by the learned Civil Judge (Senior Division), Sonapur in T.S. No.65 of 2000.

2. The suit filed by the present Appellant as the Plaintiff as the against the Respondents (Defendants) has been dismissed.

3. 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 Suit.

4. The Plaintiff's case is that one Gopi Mahakur had two sons, namely, Panchu and Srimat. Srimat is the father of the Plaintiff. Panchu had a daughter, namely, Nura, who died issueless. So, the Plaintiff is the only legal heir of Srimat. The Defendants are the legal heirs of Ananta Panda. It is stated that in the 4th settlement, the suit land had been wrongly recorded in the name of Ananta. The Plaintiff challenged the said record of right. The suit land comes under plot no.1868 and 1869 of the 4th settlement and those correspond to plot no.751 and 749 of 3rd settlement. It is claimed that the ancestors of the Plaintiff are the owners of the land under plot no.749 and 751 along with the land under plot no.235 as per the record of right of the 3rd settlement. The Plaintiff's assertion is that his ancestors had been in possession of the land under the above plots till their death and he is now in possession of the same. It is alleged that during the current settlement operation, the suit land was wrongly recorded in the name of Kausalya Panda and others and it was simply based on the wrong entries made in the record of right of 4th settlement wherein and whereby the physical possession of the suit land by the Plaintiff had been ignored. It is alleged that when the Settlement Authority were informed about the mistake, they expressed their inability to correct the same. The Plaintiff has also alternatively pleaded to have acquired the title over the suit land by adverse possession. It is claimed that from the time of his forefathers,

the suit land has been under their possession and its upward of fifty years by the time of suit. He also claims that trees had been planted on the ridges of the suit land. It is stated that the Defendants, taking advantage of the wrong recording of the suit land, had initiated a proceeding under section 144 Cr.P.C. and thereafter when they made all the attempts to dispossess the Plaintiff from the suit land, the suit has come to be filed.

5. The Defendants, in their written statement, have pleaded that Panchu Mahakur was the son of Madhu Mahakur and the Plaintiff is in no way related to Panchu. They have further pleaded that the suit land was rightly recorded in the name of Ananta Panda in the 4th settlement. So, accordingly it has been recorded in the name of Defendants 1 and 2 and Sunit Hota in the 5th settlement. It is their specific case that the land measuring Ac.0.100 decimals out of the said plot no.1868 as per the record of 4th settlement, had been acquired by the State Government for construction of a canal and compensation for the said acquisition has been paid to Kausalya Panda and her sisters. Land covered under plot no.1869 corresponding to plot no.749 of 3rd settlement, originally belonged to Kairi Fathei. The suit land was acquired by Karitk Panda, the father of Ananta and Daitary from Panchu Mahakur and Kairi Mahakur by two separate registered sale deeds of the year 1939 and 1940 and based on those sale deeds, mutation was allowed. The sale deeds, which had been filed in those mutation cases, were not received back by Kartika and those were thus lost. Karitaka died leaving behind his two sons, namely, Daitari and Ananata. It is said that in a partition between them, the suit land had fallen to the share of Ananta and accordingly, it has been rightly recorded in his name in the 4th settlement. Since then, Ananta is in possession of the suit land as of his

own right, title and interest and after his death, the Defendants along with their mother being his successors, have remained in exclusive possession of the same. It is asserted that the Plaintiff has no relation with Madhu and Panchu and he has no right whatsoever over the suit land and has never possessed the same. It is also stated that the Plaintiff has not perfected title by way of adverse possession in so far as the suit land is concerned. The Defendants thus claim to be in possession of the suit land for more than sixty years and they assert to be having the right, title and interest over the same even in that way too.

6. On the above rival pleadings, the Trial Court framing six issues, upon examination of the evidence on record and their evaluation, has gone to answer issue no.4 which concerns with the claim of the Plaintiff over the suit land that he has got the right, title and interest as a successor of Panchu and Srimat.

Upon examination of the evidence and their evaluation, a finding has been recorded that the Plaintiff has failed to establish his right, title and interest over the suit land being the successor of Panchu, the original recorded tenant as per the record of the 3rd settlement.

Coming to answer issue no.5 as to the claim of the Plaintiff as regards acquisition of title over the suit land by way of adverse possession, the answer has also been recorded against the Plaintiff.

7. The unsuccessful Plaintiff having carried the First Appeal, has also failed.

8. Heard learned counsel for the Appellant in the matter of admission of this Appeal. He submits that the Courts below are not justified in recording a finding that the Defendants have their title over the suit land and that is simply on the basis of the record 4th settlement

and the ROR entries made therein. He submits that when the registered sale deeds based on which the Defendants claimed to have acquired the title have not been proved, the finding of right, title and interest over the suit land in their favour basing jupon the settlement records, which do not create or extinguish title of the true owner is unsustainable. He, therefore, submits for admission of this Appeal on the above substantial question of law.

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

10. The Trial Court, at paragraph-7 of its judgment, is seen to have made an elaborate discussion of the evidence adduced form the side of the Plaintiff.

P.W.1's evidence is important for the purpose. According to him, Srimat and Panchu were two brothers and Nura is the daughter of Panchu, who died issueless. So, he claimed to be the sole successor of Panchu. It is stated that he is in possession of the suit land which comprises of two plots since the time of his ancestors. Admittedly, in the record of 3rd settlement, the suit land was recorded in the name of Panchu and in the subsequent settlements, the land has been recorded in the name of Anata Panda and the Defendants. He states that his ancestors had never sold the suit land to anybody. In his evidence, the Plaintiff has admitted Madhu to be the father of Panchu and subsequently has gone to deny the same. Although he is stating Khairi to be the sister of his father, the same has not been mentioned in the plaint averments. The witness of the Plaintiff (P.W.2) has admitted that a portion of the suit land was acquired by the State for construction of canal which has, however, been denied by the Plaintiff. The Defendant

No.1 has stated about the purchase of the suit land by her grandfather and she has explained as to how the sale deeds have been missing. She has denied Panchu to be the brother of Srimat. The plaintiff has admitted Madhu to be the father Panchu. Ext.1 also disclose that Panchu is the son of Madhu. No further evidence has been adduced by the Plaintiff to prove that Madhu is in any way related to Srimat. There being no pleading, the Plaintiff cannot say that Khairi is the sister of his father. Since Madhu is no way related to the Plaintiff, the Plaintiff cannot claim any right in respect of the properties of Panchu even if Panchu had not left no heir. Furthermore, it appears that the Plaintiff has not taken any steps during current settlement for recording of the suit land in his name. On the other hand, the land, as per the record of 4th settlement, has been so recorded in the name of Ananta Panda. Presumption of possession accordingly flows therefrom.

In view of such evidence on record, it is found that the Trial Court has rightly held that the Plaintiff has failed to establish his right, title and interest over the suit land being the successor of Panchu Mahakur and the First Appellate Court, on independent analysis of evidence on record at its level, is also found to have committed no such error in affirming the same.

11. Coming to the alternative claim of case of the Plaintiff as to acquisition of title by way of adverse possession, here even accepting for a moment that the Plaintiff is in possession of the suit land, the important ingredient that such possession was by asserting the right over the said land as its owner in denial of the title of the true owner is found missing. It is seen that a part of the suit land being acquired by the Government for construction of a canal and compensation being not paid to the Plaintiff, he on that score has never advanced any claim

before the Authority nor has pursued the matter any further. In fact, when the Plaintiff has denied the factum of acquisition of a portion of the suit land by the State, his own witness admits the said fact. Both the Courts below appears to have gone for detail analysis of evidence in ultimately recording the answer on that issue no.5 against the Plaintiff. This Court, on going through the discussion of the evidence as made by the Courts below, not only finds the same to be in consonance with the weight of evidence on record and the settled position of law holding the find.

In view of the aforesaid, this Court is of the considered view that there surfaces no substantial question of law meriting admission of this Appeal.

12. In the result, the Appeal stands dismissed. The Judgments and decrees passed by the Courts below stand confirmed. There shall, however, be no order as to cost.

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

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