

IN THE HIGH COURT OF ORISSA AT CUTTACK

S.A. No.73 of 1991

In the matter of appeal under Section 100 of the Code of Civil Procedure assailing the judgment and decree dated 22.12.1990 and 07.01.1991 respectively passed by the learned Subordinate Judge, Athagarh in Title Appeal No.1 of 1988 confirming the judgment and decree dated 28.11.1987 and 23.12.1987 respectively passed by the learned Additional Munsif, Baramba in Title Suit No.10 of 1982.

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Bhagaban Kar (Since Dead) by his Appellants
LRs and Others

-versus-

Bhimsen Kar (Since Dead) by his Respondents
LRs and Others

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

For Appellants - Mr.A.K. Mishra
(Advocates

For Respondents - Mr.A.C. Panda
(Advocate)

CORAM:
MR. JUSTICE D.DASH

Date of Hearing : 19.07.2022 : 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 22.12.1990 and 07.01.1991 respectively passed by the learned Subordinate Judge, Athagarh in Title Appeal No.1 of 1988.

By the same, the Appeal filed by the present Appellants being aggrieved Defendants under section 96 of the Code, has been dismissed and thereby the judgment and decree dated 28.11.1987 and 23.12.1987 respectively passed by the learned Additional Munsif, Baramba in Title Suit No.10 of 1982 declaring the right, title, interest and possession of the Plaintiffs have been declared injuncting the Defendants permanently from interfering with the possession of the Plaintiff, have been confirmed.

It may be stated here that during pendency of this Appeal, the Appellant No.1, having died, his legal representatives, being substituted, are on record. So also, the Respondent No.1, since has expired, his legal representatives, have been brought on record.

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 his father was in possession of the suit land prior to 1959 and sometime in the year 1959, the Plaintiff acquired the suit land being so leased out by the State. It is further stated that the Plaintiff and his father planted fruit bearing trees over the suit land and when the Defendants trespassed over the suit land, a criminal case vide ICC No.28 of 1979 was so instituted. The said case ended in acquittal with a finding that the dispute is of civil nature. In the said criminal trial, the Defendants had taken a plea that they have been leased out a portion of the suit land. So, the present suit has come to be filed.

4. The Defendants, in their written statement, while traversing the plaint averments, stated to be in possession of the land under plot no.9/8 measuring Ac.0.18 decimals with plot plot no.12/19 measuring Ac.0.40

decimals which is adjacent to their Bari and the possession is said to have been from the time of their ancestor's way back since 1937-38. It is their case that they had planted fruit bearing trees on the said piece of Government land because of the fact that the then Ruler of Baramba had made an announcement that anybody, planting fruit bearing trees on the Government land, would acquire the right over the said land. It is stated that the land under plot no.9/8 and 12/19 were subsequently leased out in favour of Defendant No.1 and since then the Defendants are in possession of the lands under both the plots in total measuring Ac.0.58 decimals.

5. The Trial Court, on the above rival pleadings, having framed six issues in total; on answering the crucial issues, issue nos.3 and 4 with regard to the rival claim of the Plaintiff on one hand and the Defendants on the other, upon examination of the evidence and their evaluation, the following important finding has been returned.

“that the Plaintiff is not claiming any portion of the land of the Defendants under plot no.9/8 and 12/19 in the garb of suit plot no.9/10 and that the Plaintiff is in possession of the land suit plot no.9/10”

With the above finding, the Defendants were permanently enjoined from interfering in the possession of the Plaintiff over the suit land.

The Defendants, being aggrieved by the aforesaid decision of the Trial Court, having carried an Appeal, have been unsuccessful.

6. During pendency of this Appeal, one application under Order 41 Rule 27 of the Code has been filed by the Defendants with a prayer to admit the record of right issued in favour of Bhagaban Kar.

It is stated in the application and submitted that this record of right, having been filed in the criminal case, it was in record and timely steps could not be taken to obtain the same and prove it in course of hearing of the suit and the First Appeal.

The document is said to be a public document and it also reveals that it had been filed and admitted in evidence as Ext.1 in the criminal trial. The record of right has been issued in favour of Bhagaban Kar, S/o-Lokanath Kar and these Defendants are the sons of Lokanath Kar and one of them is Bhagaban Kar himself. When the learned counsel for the Appellants, reiterating what have been stated in the averments, taken in the application, submitted that this document is required to be admitted in evidence to enable the Court to pronounce the judgment in this Appeal in properly answering the substantial question of law; leaned counsel for the Respondents countered in stating that the nexus between the suit land and the land particulars indicated in the said record of right is not shown and, therefore, it has nothing to do with the present lis. Perusal of the document reveals that it is of the year 1929. The seal put on the document appears to be of recent past and in several places, there has been interpolation/correction and that too in respect of the area. Its genuineness appears to be doubtful. In view of the aforesaid, at this stage, this Court is not inclined to accept the said document, as an additional evidence.

7. The Appeal has been admitted on 26.03.1991 to answer the following substantial questions of law:-

“A. When the Plaintiff specifically prayed for declaration of title, confirmation of possession and permanent injunction regarding by plot no.9/10, whether the Courts below were justified in giving the finding that by plot no.9/10 which does

not exist in the map correspond to by plot no.9/8 and by-plot no.12/19?;

B.Is the suit hit by the principles under Order 7 Rule 3 of the Civil Procedure Code?”

8. Learned counsel for the Appellants submitted that the Courts below are not right to indirectly recording the finding that the Defendants have no title and possession over the suit land under plot no.9/8 when the prayer for amendment of the plaint filed by the Plaintiff that patta granted in favour of the Defendants in respect of plot no.9/8 and 12/19 are forged, had been rejected. He submitted that the findings of the Courts below that the Defendants’ suit plot is identifiable is based on non-consideration of the document relied upon by the parties. According to him, the Courts below are also not justified in recording the finding that by-plot no.9/10, which does not exists in the map corresponding to by-plot no.9/8 and by-plot no.12/19. It was submitted that the Courts below, having unnecessarily given emphasis to the report of the Civil Court Commissioner (Ext.C/1), have fallen in grave error in holding that he Plaintiff is the owner in possession of the suit plot no.9/10.

9. Learned counsel for the Respondents, on the other hand, supported the findings of the Courts below. According to him, on proper appreciation of evidence, the Courts below, having concurrently held that the Plaintiff is the owner in possession of the land under suit plot no.9/10 by ascertaining its existence on the basis of the documentary evidence and discarding the claim of the Defendants based upon Ext.A to Ext.M, the same is not liable to be interfered with by this Court in seisin of the second Appeal when no such perversity is shown to have surfaced.

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.

11. The Plaintiff has laid the claim over the land under plot no.9/10 covering an area of Ac.0.24 decimals by pleading that the same has been obtained on lease from the Government way back in the year 1959 and it is further stated that his father was and he is in possession of the same. In support of the same, Ext.1 has been proved and that is of the year 1960-61 received on mutation. The rent receipts have been admitted in evidence and marked Ext.2 series and the draft Khatian (Paracha) is Ext.3. From all these, the Courts below appear to have rightly held that the Plaintiff has proved to have obtained the suit land under plot no.9/10 measuring Ac.0.24 decimals on lease from Government. In that view of the matter, the Courts below appear to be correct in saying that the existence of said plot of land has to be accepted. The Parcha (Ext.3) shows that the suit plot no.9 corresponds to Hal Plot No.1540.

At this juncture, the report of the Amin (Ext.9) in connection with Anabadi Case No.58 fo 1959-60 being gone through, it is seen that the land under plot no.9/10 under khata no.1 measures Ac.0.24 decimals and that had been recommended for being settled in favour of the Plaintiff, which has accordingly been settled with the Plaintiff under Ext.1. The Defendants' document, (Ext.D) shows that plot no.9/8 and 12/19 have been recorded in the name of Defendant No.1 (Bhagaban Kar). The prayer to prove such patta by way additional evidence has been rejected for the reasons as aforesaid. When Ext.5, the mutation sheets show that plot no.9/8 has been recorded in the name of Gangadhar Singh, the Courts below cannot be said to have gone wrong in saying that such patta cannot be said to belonging to Defendant No.1 and the Court

below are thus right in refusing to accept the defence case that the Plaintiff is claiming plot no.9/8 as the suit plot in the garb of plot no.9/10. Moreso, when from Ext.5, the plot no.9/8 is found to have been owned by Gangahdar, the report of the Amin (Ext.8) also provides support to the same and so also the evidence of Amin (P.W.6). From all these, the Courts below are found to wholly justified in saying that the suit plot no.9/10 is different from that of plot no.9/8 and 12/9. The First Appellate Court has also discussed the report of the Civil Court Commissioner (Ext.C/1) and on detail analysis of the same having found that the same reveals the existence of suit plot no.9/10 and the boundary shown in the plaint in respect of the suit land is correct; the conclusion that there is existence of plot no.9/10, which is in possession of the Plaintiff and not as claimed by the Defendants to be belonging to them having held that the Plaintiff is the right, title and interest holder of the suit land and is in possession of the same; this Court finds no such error in that.

In that view of the matter, the Defendants being made to suffer under a decree of permanent injunction being so granted in favour of the Plaintiff, as prayed for, this Court finds no such justification or reason to interfere with the same. The substantial questions of law are accordingly answered in favour of confirmation of judgment and decrees passed by the Courts below.

12. Resultantly, the Appeal stands dismissed. There shall, however, be no order as to cost.

(D. Dash)
Judge