

IN THE HIGH COURT OF ORISSA AT CUTTACK

S.A. No.198 of 1988

In the matter of appeal under Section 100 of the Code of Civil Procedure assailing the judgment and decree dated 25.03.1988 and 15.04.1988 respectively passed by the learned Sub-Ordinate Judge, Sonapur in Title Appeal No.5 of 1985 confirming the judgment and decree dated 22.07.1986 and 06.08.1985 respectively passed by the learned Munsif, Sonapur in Title Suit No.3 of 1982.

Jayadaya Agarwalla

....

Appellant

-versus-

Jogeswar Meher

....

Respondent

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

For Appellant

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Mr. Budhiram Das
(Advocate)

For Respondent

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Mr. H.K. Agarwalla and
Mr. S.P. Mohapatra

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

Date of Hearing : 20.09.2022 : Date of Judgment: 26.09.2022

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 dated 25.03.1988 and 15.04.1988 respectively passed by the learned Subordinate Judge, Sonapur in Title Appeal No.5 of 1985.

By the same, the Appeal filed by the present Appellant under section 96 of the Code challenging the judgment and decree dated

22.07.1986 and 06.08.1985 respectively passed by the learned Munsif, Sonapur in Title Suit No.3 of 1982, has been dismissed and thus the suit filed by the present Appellant, as the Plaintiff, has been dismissed and he has 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. The Plaintiff's case is that he is the owner of the land under Plot No.2029 out of Holding No.243 of Village-Rampur. He had purchased this land by registered sale deed and has been in possession of the same having the right, title and interest from the date of said purchase. It is stated that the land under Plot No.2032 is a piece of Government land which adjoins his purchased land under Plot No.2029 and in order to approach the land under Plot No.2029, one has to pass through the land under Government Plot No.2032. It is stated that except this approach, there is no other way/access to the land under Plot No.2029. The Defendants are stated to be having no right, title and interest over the Government land. It is stated that they have forcibly constructed the house over a portion over it thereby blocking the passage leading from the public road to the land under Plot No.2029 belonging to the Plaintiff. It is further stated that Government land is being used as passage continuously stretching over a period of 50 years or more and the Plaintiff has the right to use the said plot as a passage. The Plaintiff, therefore, alleging obstruction over that Government plot of land by the Defendant in causing him the hardship for having the access to his own land under Plot No.2029 from the public road, filed the suit for permanent injunction to restrain the Defendant from causing any

obstruction over that piece of Government land with further prayer for issuance of a mandatory injunction for removal of the construction put up by him over there.

4. The Defendant, in the written statement, has denied the fact placed by the Plaintiff that in order to approach the land under Plot No.2029, the only way runs from the public road is through the Government Plot No.2032. It is stated that the suit land of the Plaintiff is approachable from all sides and Government plot under Plot No.2032 is not the only available way to the Plot No.2029 so as to come over to the public road. It is further stated that the adjoining land under Plot Nos.2034 and 2033 are vacant and through those, one can easily go to the land under Plot No.2029. It is his case that the land under Government Plot No.2032 measures Ac.0.14 decimals and out of the same, he is in possession of Ac.0.003 decimals. The possession as such by the Defendant is stated to be for more than 50 years along with the land under Plot No.2031, which the Defendant has purchased. It is his case that while purchasing the land under Plot No.2031, an old house was standing. The Defendant admits that he had faced Encroachment Case No.1 of 1981. He further submits said proceeding has been dropped by the Authority after due enquiry and therein it had also been found that said small portion of the Government Plot No.2032 over which the house stands is causing no such inconvenience to anyone. It is his case that his house is standing over his purchased land under Plot No.2031 and on that small portion of Government land under Plot No.2032 and that is in no way causing any obstruction to anybody for having smooth movement in any manner.

5. On the above rival pleadings, the Trial Court, in total, has framed 13 issues. On going through all those issues, it is seen that the crucial issue whose answer would decide the fate of the suit is issue no.3.

The Trial Court, on examination of evidence and their evaluation, has answered this issue no.3 against the Plaintiff. Other issues then being also answered by the Trial Court, finally the suit has been dismissed.

The unsuccessful Plaintiff then having carried the First Appeal, has failed in the move.

6. The present Appeal has been admitted to answer the substantial questions of law as indicated in Ground Nos.1 and 2 of the Memorandum of Appeal, which are reproduced hereinbelow:-

“(a)In view of the finding of the learned lower appellate court that the correctness of Ext.4 has not been questioned and in view of the evidence of P.Ws, if the courts below are justified in holding that the plaintiff has no right over the suit land?; and

(b) In view of the order passed by the S.D.O in Encroachment Case No.17 of 1982 and in view of the evidence of P.Ws, if the findings of the courts below that the encroachment is old one is sustainable under law?”

7. Learned counsel for the Appellant submitted that the findings of the courts below on issue no.3 are the outcome of perverse appreciation of evidence on record. Inviting the attention of the of this Court to paragraph-8 of the judgment of the First Appellate Court, he placed that the oral evidence of the witnesses examined from the side of the Plaintiff have not been viewed in their proper perspective and, therefore, the conclusion arrived at cannot stand to judicial scrutiny. He further submitted that the Defendant’s evidence on the above score having also been found to be inconsistent with the available evidence on record, the

Courts below ought to have accepted the claim of the Plaintiff in injunction the Defendant permanently and passing a mandatory injunction as to demolition of house over the portion of that Government plot of land. He, therefore, submitted that the judgments and decrees passed by the Court below are vulnerable.

None appeared for the Respondents in this Appeal when called.

8. 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. The evidence both oral and documentary have been perused.

9. The Plaintiff has laid the suit for injunction claiming infringement of his right of way/passage over the land under Plot No.2032 in order to approach his own land under Plot No.2029 from the public road. It is stated that the Plaintiff has been using the said land as passage to come from his own land to the public road for more than half a century by the time of institution of the suit and such user is said to be open, peaceful and continuous. The user as such being for such a long period, it is stated that a right has accrued in his favour in so far as that land is concerned, which he says to have been infringed by the Defendant when he has made construction over a portion of the said land under Plot No.2032. That land under Plot No.2032, as stands admitted, is owned by the State. The right of the Plaintiff to use Government land as passage is seen to have been claimed as natural right, which he alleges to have been infringed by the Defendant for which an injunction has been sought for. In view of the aforesaid, it now stands for examination as to how the Plaintiff has proved that his case so as to be entitled to a decree for injunction as prayed for against the

Defendant. The Plaintiff, in his evidence, has stated to be having no other way to come to the public road except through the said land of the Government. The certified copy of khatian (Ext.4) show that Plot Nos.2032 and 2036 are road belonging to Sarba Sadharan. The village map (Ext.3) indicates the situation of the suit plot as well as other plots. It is seen therefrom that Plot No.2032 although is adjoining to the public road, it has not been shown as road. The other Plot No.2029 situates behind the plot of the Defendant from the main road. When it has been stated by the P.Ws.1 and 2 that the land was used as passage, the evidence of P.W.3 cuts the case of the Plaintiff at its throat when he has said that said land was used for storing fertilizers. It has also been stated by that P.W.2 that many people have come and constructed house over that Government land which he has been seeing from his childhood days. This provides great support to the case of the Defendant when he says to have constructed a house on the land spreading over Plot Nos.2031 as well as that plot number 2032 to an extent of Ac.0.003 decimals, the Defendant has proved to have purchased the land under Plot No.2031 with the standing house. The evidence on record shows that the Defendant having simply demolished the old wall has put up a new wall in the house which he purchased as was standing over the land under Plot No.2031.

Therefore, taking a cumulative view on the evidence without solely relying on Ext.4; the Courts below having concurrently held that the Plaintiff has not satisfactorily proved that he was using the entire land under Plot No.2032 belonging to the State as passage/way, this Court finds the same to be well in order.

The substantial question of law as at (a) being accordingly answered against the Plaintiff, other substantial questions of law do not

survive for being answered. In view of above, this Court finds the same to be well in order and the judgments and decrees passed by the Courts below are hereby confirmed.

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

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

Basu

