

HIGH COURT OF ORISSA AT CUTTACK

RSA NO.338 OF 2008

In the matter of an appeal under section 100 of the Code of Civil Procedure assailing the judgment and decree dated 26.10.2006 and 09.11.2006 respectively passed by the learned Additional District Judge, Jharsuguda in RFA No.8 of 2006 setting aside the judgment and decree dated 25.11.2005 and 03.12.2005 respectively passed by the learned Civil Judge (Jr. Division), Jharsuguda in Civil Suit No.02/2005.

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***State of Orissa, represented
By Collector, Jharsuguda
and Another***

....

Appellants

-:: VERSUS ::-

Premachandra @ Premchand Bhoi

....

Respondent

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

For Appellants ::: Miss Samapika Mishra,
Addl. Standing Counsel.

For Respondent ::: M/s. Sanjib Udgata,
Satyabrata Udgata &
Asutosh Mishra,
(Advocates)

CORAM:

MR. JUSTICE D.DASH

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

D.Dash,J. The Appellant-State, by filing this Appeal, under Section-100 of the Code of Civil Procedure, 1908 (for short, 'the Code') have assailed the judgment and decree passed by the learned Additional District Judge, Jharsuguda in RFA No.8/2006.

By the same, the Appeal filed by the present Respondent (Plaintiff) under Section 96 of the Code has been allowed and the suit filed by the Respondent as the Plaintiff has been decreed declaring his

right, title and interest over the suit property which measures Ac.0.02 decimals appertaining to plot No.976 under khata No.100 record as “Rasta” in the Major Settlement in the name of the Appellant-State (Defendant).

The Respondent as the Plaintiff had filed the suit standing numbered as Civil Suit No.02/2005 in the Court of Civil Judge (Jr. Division), Jharsuguda. He therein has prayed for declaring his right, title and interest over the suit property and his possession of the same. The Trial Court have been dismissed the suit; in the First Appeal, the Respondent (Plaintiff) has been successful in getting the judgment and decree passed by the Trial Court annulled and in obtaining the decree as above in his favour.

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. Plaintiff's case is that he has been possessing the suit land from the year 1970 by constructing a hut over it and running a hotel to the knowledge of all concerned and thus having possessed the suit land for more than 30 years by the time of instituting of the suit, he claims to have perfected title over the suit property by way of adverse possession.

It has been stated that although the Plaintiff is in possession of the suit land since the year 1970, but, being falsely alleged that he has been in possession of the property for fifteen years; in the year 2004, a proceeding has been initiated against him for his eviction from the suit land under Encroachment Case No.1318/2004 by restoring to the provision of Orissa Prevention of Land Encroachment Act, 1972. It is further stated that the Competent Authority in that eviction proceeding had directed for eviction of the Plaintiff from the suit property. The

order being illegally passed, the Plaintiff had carried an appeal and that having been dismissed, he has filed a revision.

4. The Defendants in their written statement have denied the claim of the Plaintiff that he is not in possession of the suit land from the year 1970. They assert that the Plaintiff has been in possession of the property for fifteen years by the time of initiation of the encroachment proceeding and rightly, the order of eviction has been passed in that proceeding which has been confirmed in appeal. They state that the Plaintiff has not acquired the right, title and interest over the suit property by adverse possession and as such is not entitled to the reliefs as prayed for.

5. On the above rival pleading, the Trial Court has framed six issues. The crucial issue, i.e., issue No.4 concerns with the claim of the Plaintiff as to have acquired title over the property in suit by virtue of adverse possession has been negated. The Trial Court on going through the evidence on record and upon their examination has held that the Plaintiff has failed to prove his case of acquisition of title over the suit property by adverse possession. Practically this finding has led the Trial Court to dismiss the suit.

6. The suit of the Plaintiff having thus been dismissed by the Trial Court, in the First Appeal he has been successful in getting his suit decreed by obtaining a decree of declaring of his right, title and interest over the suit property. Hence the present Second Appeal is at the instance of the State.

7. The appeal has been admitted for answering the following substantial question of law:-

“Whether the First Appellate Court has erred both on fact and law in holding that the Respondent (Plaintiff) has perfected his title over the suit land by way of adverse possession by reversing the findings of the Trial Court returned against the Respondent (Plaintiff).

8. Learned counsel for the State submitted that the First Appellate Court from the beginning has misdirected itself in not placing the burden of proof upon the Plaintiff that he is to establish his case of accusation of the title over the suit property by way of adverse possession. He submitted that even accepting for a moment that the Plaintiff has been in possession of the property in question from the year 1970, the evidence on record are not enough to hold that he was acquired right, title and interest over the suit property by way of adverse possession. According to him the Plaintiff has utterly failed to establish through clear, cogent and acceptable evidence all those legal requirements in support of a claim of acquisition of title over the suit land by adverse possession. It was submitted that the view taken by the First Appellate Court in arriving at a conclusion that the Plaintiff has acquired the right, title and interest over the property by way of adverse possession is not only contrary to the evidence on record but also runs against the settled position of law holding the field.

9. Learned counsel for the Respondent on the other hand supported the findings returned by the First Appellate Court. According to him with the overwhelming evidence of possession of the suit property by the Plaintiff for more than the period prescribed for the purpose of accusation of title over the suit property by adverse possession when other elements also stand clearly proved through the circumstances as have emanated from evidence, the First Appellate Courts judgment and decree are unassailable.

10. Keeping in view the submissions made, I have carefully read the judgments passed by the Courts below and I have also gone through the plaint and written statement as well as the evidence both oral and documentary let in by the parties.

11. At the cost of repetition, it may be stated here, that the Plaintiff's case in simple term is that he has been in possession of the property from the year 1970. Although in the plaint, no such day and month of the year 1970 has been pleaded, yet it has come from him in evidence that the commencement of possession was on the Diwali day of that year.

The position of law is well settled that a person claiming acquisition of title over the immovable property by way of adverse possession has to discharge the burden of proof of the fact that he has been in possession of the property for a period of more than thirty years as in case of property belonging to the State by exercising all such rights of ownership and claiming right, title and interest over the same unto himself and more importantly, denying the title of the true owner-State to its knowledge by exhibiting hostile animus all throughout.

A careful reading being given to the plaint; it is seen that the Plaintiff has not stated as to how he came to possess the suit land. It is also not stated as to whether he was in possession of his other land lying on the side and then possessed the suit land or he first came to possess only the suit land. The suit land in the Hal Settlement stands recorded in the name of State and its Kisam finds mention as 'Rasta'. The Plaintiff himself being examined as P.W.1 has not been able to describe the exact area of the suit land and has also not given the boundary of the said suit land while admitting the Kisam of the suit land as Sarba Sadharan Rasta. The settled position of law that mere possession of the immovable property by the possessor for any length of time whatever it may be,

would not give rise to a case in his favour as to have acquired right, title and interest over the said land in possession unless it is shown through clear, cogent and acceptable evidence that he from a particular date possessed the suit land as its owner denying the title of the true owner and exercised all such rights of ownership to the knowledge of the true owner althrough; In the case at hand, the evidence on record being gone through are found to be wholly lacking on all those scores other than mere possession as stated. The witnesses examined from the side of the Plaintiff have also not deposed by touching upon all those required elements to lead the Court to arrive at the satisfactory conclusion on all those aspects except that the Plaintiff has been in possession of the suit property. This alone is not enough to uphold the claim of the Plaintiff in concluding that he has perfected title over the suit land by way of adverse possession.

In that view of the matter, the substantial question of law is answered against the case/ claim of the Plaintiff over the suit property. Therefore, the judgment and decree passed by the First Appellate Court are held liable to be set aside which is accordingly ordered.

12. In the result, the Appeal stands allowed. The judgment and decree passed by the First Appellate Court are hereby set aside and those passed by the Trial Court in dismissing the suit and non-suiting the Plaintiff stands restored. In the facts and circumstances of the case, no order as to cost is passed.

(D. Dash)
Judge