

IN THE HIGH COURT OF ORISSA AT CUTTACK

Second Appeal No.157 of 2002

In the matter of an Appeal under Section 100 of the Code of Civil Procedure assailing the judgment and decree 02.04.2002 and 08.04.2002 respectively passed by the learned Additional District Judge, FTC No.2, Bhubaneswar in T.A. No.79 of 1997 (6/01) confirming the judgment and decree dated 23.10.1997 and 06.11.1997 respectively passed by the learned Civil Judge, Junior Division, Bhubaneswar in T.S. No.181 of 1993.

Kailash Chandra Mohapatra ***Appellant***

-versus-

Sri Sri Lingaraj Mohaprabhu, Bije ***Respondent***
Bhubaneswar through the
Executive Officer, Sri Sri Lingaraj
Endowment Trust Committee,
Bhubaneswar-2

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

For Appellant - Mr.S.P. Mishra
(Senior Advocate)

For Respondent - Mr.A.R. Dash
(Advocate)

CORAM:
JUSTICE D.DASH

Date of Hearing : 20.10.2022 : Date of Judgment:23.12.2022

D.Dash,J. The Appellant, in this Appeal under Section 100 of the Code of Civil Procedure, 1908 (for short, 'the Code'), has assailed the judgment and decree 02.04.2002 and 08.04.2002 respectively passed by the learned Additional District Judge, FTC No.2, Bhubaneswar in T.A. No.79 of 1997 (6/01).

By the same, the Appeal filed by the Appellant (Plaintiff) under section 96 of the Code in challenging the judgment and decree dated 23.10.1997 and 06.11.1997 respectively passed by the learned Civil Judge, Junior Division, Bhubaneswar in T.S. No.181 of 1993, has been dismissed.

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 the Defendant has leased out the suit land in favour of one Upendranath Das on 02.07.1947. Said Upendranath remained in possession of the said land, which is the subject matter of the suit till 01.05.1970. He then alienated the suit property measuring Ac.0.216 decimals in favour of the Plaintiff by registered sale deed dated 01.05.1970. The Plaintiff, after purchasing the suit land, got the same mutated in his name and is continuing to possess the same by paying the rent. It is stated that he has constructed a house over it and has been paying the holding to Bhubaneswar Municipality Corporation for the said house.

Alternatively, it is stated that even considering the lease and the sale deed as invalid in law; the Plaintiff, having remained in possession of the property in question for over the statutory period which too has been recognized in the record of right finally published on 21.03.1989 prepared erroneously in the name of the Defendant, but with a note of illegal possession of the Plaintiff under illegal purchase, the Plaintiff has acquired title over the suit land by way of adverse possession.

4. The Defendant, in his written statement, having raised the technical pleas as to the maintainability of the suit, lack of cause of action, suit being barred by limitation and undervalued etc., has also pleaded that the suit is barred by the provision of section 39 of the Orissa Estate Abolition Act and section 69 of the Orissa Hindu Religious Endowment Act. It is asserted that no such lease was ever granted to that Upendranath and the sale of the suit land said to have been made by Upendranath in favour of the Plaintiff is wholly impermissible in the eye of law. It is stated that the documents like rent receipts etc. have been created by the Plaintiff for the purpose and those are also not genuine. It is pleaded that the Record of Right in respect of the suit land has been correctly prepared by the Settlement Authority.

5. On the above rival pleading, the Trial Court has framed as many as six issues. Answering Issue No.1, which is crucial one as to the competing claim of the title over the suit land by the Plaintiff and the Defendant, upon examination of evidence and their evaluation, the answer has been rendered against the Plaintiff, which has practically led to the dismissal of the suit.

The unsuccessful Plaintiff, having carried the First Appeal, has again been unsuccessful. Hence, the Second Appeal against the findings and decisions of the Courts below that the Plaintiff has no right, title and interest over the suit land and is not entitled to the reliefs and claimed.

6. The present Appeal has been admitted to answer the following substantial questions of law:-

“i. Under the given facts and circumstances whether legally a case of adverse possession as raised by the plaintiff-appellant is available in his favour.”

7. Mr.S.P.Mishra, learned Senior Counsel for the Appellant submitted that it being the settled position of law that the possession of a person under an invalid transaction becomes adverse to the true owner from the date of such transaction, as the Courts below have confirmed the possession of the suit land by the Plaintiff even though the lease deed in favour of the vendor of the Plaintiff and the sale deed in favour of the Plaintiff are invalid, there ought to be a finding in favour of the Plaintiff that he has acquired the right, title and interest over the suit land by virtue of adverse possession. He further submitted that the conclusion of the Courts below that the possession of the Plaintiff and his vendor was permissive in nature is not sustainable in the eye of law on the face of the settled law that the possession of a person under an invalid transaction is adverse to the true owner from the beginning. He further submitted that the Courts below, having held the Plaintiff to be in constructive possession of the suit property from the time of his purchase, his claim over the property as to have acquired right, title and interest over the same ought not to have been whittled down.

8. Mr.A.R.Dash, learned counsel for the Respondent submitted that the Courts below have rightly held that the Plaintiff's claim as to have acquired right, title and interest over the suit land by virtue of adverse possession is not legally tenable. He further submitted that here a distinction has to be made that the Plaintiff's possession has come under an illegal and void lease from that so-called lessee having no such states as per law and not from the true owner and, therefore, he cannot claim to have been in possession of the property in denial of the title of the true owner.

9. For the purpose, I have carefully read the judgments passed by the Courts below. I have also gone through the plaint and written statement. The evidence adduced by the parties both oral and documentary have been travelled through.

10. The Plaintiff in the suit seeks the relief of title over the suit land, confirmation of possession, correction of the record of right and permanent injunction against the Defendant-Deity, i.e., Sri Sri Lingaraj Mohaprabhu, Bije Bhubaneswar through the Executive Officer, Sri Sri Lingaraj Endowment Trust Committee.

Both the Courts below have held the lease to be void. So, it has been said that the vendor of the Plaintiff had no right, title and interest over the property even as the leasee and the Plaintiff did not acquire any right whatsoever by virtue of the purchase by the sale deed said to have been executed on 01.05.1970 (Ext.1) by Upendranath. The Courts below, on the face of the provision of section 58(1) of the old Hindu Religious Endowment Act, which was replaced by the Act of 1951, has held the lease claimed by the Plaintiff said to have been standing in favour of his vendor Upendranath as void. In fact, no lease deed has been filed and proved and for that, the Courts below have not been able to find out and say on the period of lease and the claim of the Plaintiff claims that it was a permanent lease, has not been proved.

The record of right (Ext.A) stands in the name of the Defendant which would reveal that the suit land is the private land of the Defendant proprietor. It is the 'nijdakhal' land. The First Appellate Court has rightly turned down the contentions raised from the side of the Appellant that Upendranath became the occupancy rayat for holding the land as tenant for 12 years and more and as such, had acquired

transferable right in view of the provisions contained in section 55 of the Orissa Tenancy Act, which bars the acquisition of right of occupancy in proprietor's private land. Thus, in the above state of affairs, the vendor of the Plaintiff, as on the date of execution of the sale deed (Ext.1) on 01.05.1970 in favour of the Plaintiff can neither be said to be in possession as a leasee or as an occupancy rayat. It is the specific claim of the Plaintiff that his vendor has the right to alienate the property, which in fact has not been established. In that view the matter, when the person purchases the property from another, who has no alienable right over it which too did not belong to him, it cannot be said that he came to possess the said as his purchased land, thus as the purchaser-owner, i.e., the suit land as its owner in denying the title of the true owner. It having been said in case of Amrendra Pratap Singh –V- Tej Bahadur Prajapati; 2004 (10) SCC 65 and subsequent decisions of the Apex Court that a person having no alienable right even if sales the property to another person and that person possesses the same for any length of time as such, his possession would never mature to a claim of title as to be acquired by way of adverse possession.

In the present case, it again reveals that the Plaintiff's vendor had been paying rent to the Defendant, which itself shows that the nature of possession of the vendor of the Plaintiff was permissive. Thus, even by executing the sale deed or entering into any transaction with the Plaintiff, he cannot deliver the possession shunning its nature and character, which was permissive as he cannot deliver anything more being attached to the property and more than whatever with him.

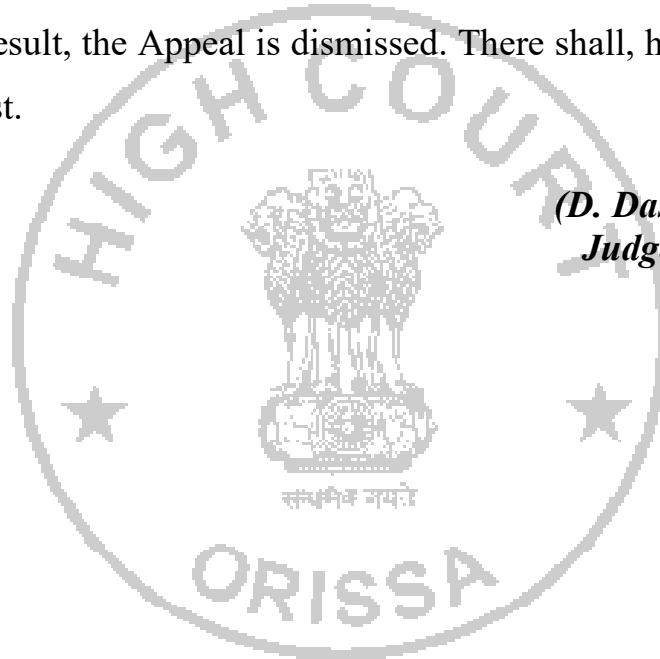
Furthermore, in the given case, the Defendant-Deity is a perpetual minor and a minor could not be attributed any knowledge of adverse

possession and, therefore, mere factum of long possession either by the Plaintiff or by his vendor is not recognizable in the eye of law for the purpose of giving rise to a case of perfection of title over the suit property of the perpetual minor by adverse possession.

11. For the aforesaid discussion and reasons; the answer to the substantial question of law runs against the case of the Plaintiff. Consequently, the judgments and decrees passed by the Courts below are hereby confirmed. The Plaintiff is, therefore, non-suited.

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

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



Basu