

IN THE HIGH COURT OF ORISSA AT CUTTACK

RSA No.131 of 2014

In the matter of an appeal under section 100 of the Code of Civil Procedure assailing the judgment and decree dated 15.11.2013 and 28.11.2013 respectively passed by the learned Additional District Judge, Bhadrak in R.F.A. No.314/13 (60/05) confirming the judgment and decree dated 24.08.2005 and 13.09.2005 respectively passed by the learned Civil Judge, Junior Division, Bhadrak in Title Suit No.46 of 2001.

Smt. Subarna Mallick

....

Appellant

-versus-

Choudhury Mallick & Another

....

Respondents

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

For Appellant

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Mr.Sidhartha Mishra,
S.N. Mishra & B.K. Behera
(Advocates)

For Respondents

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None

CORAM:

MR. JUSTICE D.DASH

Date of Hearing : 10.05.2022 : Date of Judgment:20.06.2022

The original Appellant, by filing this Appeal under Section 100 of the Code of Civil Procedure (for short, 'the Code'), has assailed the judgment and decree dated 15.11.2013 and 28.11.2013 respectively passed by the learned Additional District Judge, Bhadrak in R.F.A. No.314/13 (60/05).

By the same, the Appeal filed by the Appellant (Plaintiff) has been dismissed and thereby the judgment and decree passed by the

learned Civil Judge, Junior Division, Bhadrak in Title Suit No.46 of 2001, have been confirmed and thus the Appellant-Plaintiff's suit for permanent injunction 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 Suit.

3. Plaintiff is the daughter of Defendant No.3. The suit land originally stood recorded in the name of Gayadhar Mallik, who happens to be the husband of Defendant No.3 and father of the Plaintiff. Since Gayadhar died during progress by the Major Settlement Operation, the lands in suit erroneously came to be recorded in the name of Defendant No.3 alone instead of the Plaintiff and Defendant No.3. It is stated that the Plaintiff, with her husband, was residing at her parent's house with Defendant No.3 from the time of her marriage. In the year 1985, there arose some difficulties between the Plaintiff and Defendant No.3 for which the Defendant No.3 resided separately. It is alleged that thereafter Defendant No.3, being instigated by Defendant No.1 filed a suit bearing no.226 of 1985 against the Plaintiff stating that the Plaintiff is not her daughter and the recording of some land in Mouza-Ganjijanga both in the name of Defendant No.3 and Plaintiff is erroneous. The suit then ended with compromise where the Defendant No.3 admitted the status of the Plaintiff as her daughter wherein the Plaintiff too assured to maintain Defendant No.3 till her death.

When the mother stood thus, again in the year 1991, the Defendant No.3, alleging that the Plaintiff was not taking her care properly, filed the suit challenging that compromise decree passed in T.S. No.226 of 1985. That suit was dismissed in the year 1996 and

thereafter with the intervention of the relations and well wishers, Defendant No.3 came to reside with the Plaintiff. The Defendants 1 and 2, who had tendered evidence in support of the case of the Defendant No.3 in that Title Suit No.213 of 1994, had obtained two sale deeds from Defendant No.3 in their favour in respect of the suit schedule land. It is stated that the sales were without consideration and without the knowledge of the Plaintiff. The Defendant No.1, however, has mutated the said land from out of the land which stood recorded exclusively in the name of Defendant No.3, which the Plaintiff could come to know when she wanted to pay the rent. On enquiry, Defendant No.3 then stated that during continuance of the suit to meet the expenses towards the litigation, the Defendants 1 and 2 had got those two sale deeds executed in their favour and thereafter it was also known that the Defendants got executed another sale deed in respect of the schedule land of which they had not taken possession. The suit schedule land is the home and homestead appertaining to plot no.721 and 762 and those are adjacent to the undisputed plot no.722 towards south and east. It is stated that the dwelling house of the Plaintiff and Defendant No.3 is situated on the suit schedule plot no.722. The Plaintiff and Defendant No.3 are using the land under plot nos.721 and 762 as bari. It is further stated that Defendant Nos.1 and 2 being strangers cannot possess the suit schedule land along with the Plaintiff. On 09.02.2001, the Defendants 1 and 2 threatened the Plaintiff and her husband to come over the suit schedule land to possess the same by showing force, so the Plaintiff filed the suit to restrain them from entering upon the suit land in creating any obstruction in their possession over the same.

4. The Defendant No.1, in his written statement, has asserted that the schedule land as the self-acquired property of Defendant No.3. He

also challenged the claimed status of the Plaintiff in saying that she is not the natural born daughter of Defendant No.3. It is his case that on 07.04.1995, the Defendant No.3 duly executed a sale deed for an area of Ac.0.02 decimal of land and Ac.0.01 decimals of land appertaining to plot nos.745 and 725 respectively receiving valuable consideration. Pursuant to the same, she had delivered possession of the lands under the sale deeds to the Defendant No.1. It is also stated that Defendant No.1, having purchased the lands, has duly mutated the same in his name and the Plaintiff has no right, title and interest over the said properties.

5. The Defendant No.2 has stated in the written statement that Defendant No.3 has voluntarily transferred the suit land with her full knowledge on receipt of consideration, which she took for meeting her necessity. It is specifically stated that the Plaintiff is not the co-owner in respect of the suit land with Defendant No.3 and as such she has no locus standie to institute the suit for permanent injunction, taking the aid of the provision of section 44 of the Transfer of Property Act, 1882 (for short, 'the T.P. Act').

6. The Trial Court, with the rival pleadings, has framed nine issues.

Coming to answer the issues one by one, it has first of all held that the Plaintiff has no right, title and interest over the suit property which is the exclusive property of Defendant No.3 and as such she is not the co-owner or co-sharer vis-à-vis the suit land. This finding has practically led the Trial Court to dismiss the suit in holding that the Plaintiff, in reaping the benefit as provided in section 44 of the T.P. Act, cannot restrain the Defendants from possessing the suit land. Answering the other issues accordingly, the suit has been dismissed.

The First Appellate Court, first of all coming to decide the fate of an application under Order 41 Rule 27 of the Code filed by the Defendants, has rejected the same firstly holding the explanation given by the Defendants to be unacceptable and secondly saying that the documents sought to be admitted in evidence as additional evidence are not required for enabling the Court to pronounce the judgment or for any other substantial cause. It has then, on discussion of evidence both oral and documentary and their evaluation, arrived at a conclusion that the suit property is the self-acquired property of Defendant No.3 and, therefore, the Plaintiff, being not a co-owner or co-sharer in respect of the suit property, is entitled to the relief for permanent injunction, as prayed for.

7. Learned counsel for the Appellant submitted that the finding of the Courts below that the suit land is the exclusive property of Defendant No.3 is not the outcome of just and proper appreciation of evidence on record and the Courts below, for the purpose, have not taken into account as to the dealing with the property by the parties as it surfaces from the evidence on record and, therefore, have committed gross error in recording the finding holding the Plaintiff as not entitled to the relief claimed. He further submitted that said finding suffers from the vice of perversity. He, therefore, urges for admission of this Appeal to answer the above substantial questions of law.

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

9. The case of the Plaintiff is that as the suit property is the dwelling house belonging to the undivided family, the Defendants being not the members of the family and as such strangers, are not entitled to joint

possession or other, common or part enjoyment of the house. With this as the basic structure, banking upon the provision of section 44 of the T.P. Act, the Defendants have been sought to be enjoined from possessing the suit property.

Indisputably, the suit schedule property has been exclusively recorded in the name of Defendant No.3 and that has been admitted in evidence and marked Ext.1. No such evidence on record is forthcoming to show that at any earlier point of time, that very property stood recorded in the name of the husband of the Defendant No.3 and the father of the Plaintiff. By merely saying that it was originally owned by Gayadhara, that would not suffice the purpose of establishing the fact that Defendant No.3 got the said property from her husband. This being the position, during the lifetime of the mother of the Plaintiff, who has been arraigned in the suit as Defendant No.3, the Plaintiff cannot claim the status as a co-owner and co-sharer in far as the suit land is concerned. This from the very beginning cuts deed at the root of the case of the Plaintiff and, therefore, the Courts below did commit no error in non-suiting the Plaintiff.

For the aforesaid discussion and reasons, this Court finds that there surfaces no substantial question of law meriting admission of this Appeal.

10. Resultantly, the Appeal stands dismissed. There shall be, however, no order as to costs.

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