

IN THE HIGH COURT OF ORISSA AT CUTTACK

RSA No.334 of 2004

In the matter of an appeal under section 100 of the Code of Civil Procedure assailing the judgment and decree dated 22.06.2004 and 09.07.2004 respectively passed by the learned Ad hoc Additional District Judge, (FT), Keonjhar in R.F.A. No.9/1 of 2004 confirming the order dated 02.12.2003 passed by the learned Civil Judge, (Senior Division), Keonjhar in M.J.C. No.26 of 2002.

Rabindranath Tripathy

....

Appellant

-versus-

Smt. Tilottama Tripathy & Others

....

Respondents

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

For Appellant - M/s.S.K. Nayak-2, B.K. Rout,
S.K. Patnaik & A. Nayak

For Respondents - M/s.S.P. Mishra, Sr. Adv
S. Mishra, S. Dash & S. Nanda
(For R.1)

CORAM:

MR. JUSTICE D.DASH

Date of Hearing : 03.03.2022 :: Date of Judgment:07.03.2022

The 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 22.06.2004 and 09.07.2004 respectively passed by the learned Ad hoc Additional District Judge, (FT), Keonjhar in R.F.A. No.9/1 of 2004.

But the same, the order dated 02.12.2003 passed by the learned Civil Judge, (Senior Division), Keonjhar in M.J.C. No.26 of 2002 has been confirmed.

2. Facts necessary for the purpose are as under:-

The Respondent No.1, as the Petitioner, had filed an application under Order 21 Rule 97 read with Section 151 of the Code in Execution Case No.25 of 2001 wherein she was the Judgment Debtor No.1(e). In the said application, she prayed for the exclusion of the property as described therein from the purview of the Execution Proceeding with declaration that she has the right, title, interest and possession over such property.

The aforesaid Execution case had been filed to execute the final decree passed in T.S. No.46 of 1968. It is stated that the property in question being put to auction in Certificate Case No.85 of 1975, the Respondent No.1 had purchased the same in said auction and was delivered with the possession of the same through the process of Court in seisin of the Certificate Proceeding initiated under the provisions of Odisha Public Demand and Recovery Act for realization of the Public Demand. It is stated that the Judgment Debtor No.4 of the execution case, namely, Rangadhar Pati @ Tripathy had pleaded that Rangadhar had incurred loan from the Government and in the suit, a finding had

been rendered that Rangadhar having incurred the loan, all the Plaintiffs and Defendant No.3 are liable to pay the outstanding loan dues in equal proportion. Although the Respondent No.1 was not a party to the suit, she has been impleaded in the Execution Proceeding. The Appellant resisted the application and contested the same. It is stated that he is in possession of the disputed land which adjoins his house and being called upon by the Certificate Officer, he had admitted to pay his share amount from out of the liability of Rangadhar, but the other sharers did not come forward to deposit. It is stated that he being in possession of the disputed land for more than twelve (12) years, has acquired the title over the same by way of adverse possession.

3. The Executing Court in seisin of the said proceeding, on examination of the evidence and upon their evaluation has recorded a finding that the suit property, which is the subject matter of the proceeding initiated at the instance of the Respondent No.1 by filing an application under Order 21 Rule 97 of the Code is liable to be excluded from the purview of the Execution Proceeding as the Respondent No.1 has the right, title, interest and possession over the same.

The First Appellate Court, being moved, has confirmed the said finding and confirmed the decision made therein.

4. The Appeal has been admitted on the following substantial question of law:-

“(a)Whether the courts below are justified in accepting the application under Order-21, Rule-98 of the CPC after 12 years from the date of alleged purchase? and

(b) Whether the courts below are justified in accepting the transaction of respondent no.1 when the same is hit by principle of lis pendens?”

5. Learned counsel for the Appellant submitted that in view of the overwhelming evidence on record, the Courts below are not justified in accepting the application filed under order 21 Rule 97 of the Code after lapse of twelve (12) years from the date of said purchase by her as she claims. He further submitted that such an auction having been held during pendency of the litigation, the Courts below have erred in law by taking cognizance of the same in finally granting the benefit to the Respondent No.1.

6. Learned counsel for the Respondent No.1 submitted that the Courts below, on going through the evidence on record and taking into account the facts and circumstances of the case right from the time of institution of the suit till then, have rightly upheld the claim of the

Respondent No.1 in allowing her application and granting the relief as prayed for.

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

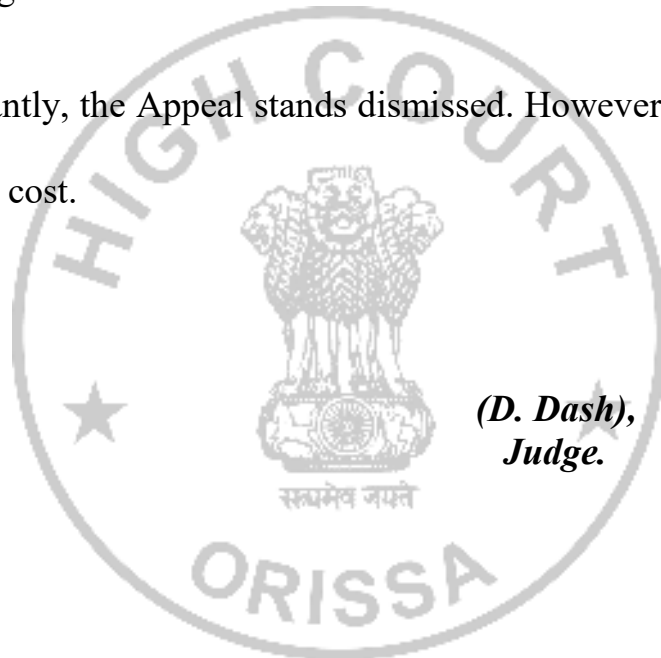
8. In order to address the rival submission, it be first stated that T.S. no.46 of 1968 had been filed for partition of the total land of Ac.21.61½ decimals. Preliminary decree was passed on 09.09.1969 and thereafter, the final decree was drawn on 18.08.1974. Rangadhar had incurred Government loan under Lower Income Group Housing Scheme and he failed to pay said loan amount during his life time. So, on the basis of a requisition sent by the Additional District Magistrate, Keonjhar, a proceeding under Odisha Public Demand Recovery Act had been initiated which bore Certificate Case No.85 of 1975. The loan had been granted on the basis of the mortgage of the land, which is the subject matter of the proceeding at hand. The Certificate Officer, after ruling on the liability, put the land in question for auction sale so as to recover the loan dues. The Respondent No.1 finally stood as successful auction purchaser and she was delivered with the possession of the said land through the Certificate Court.

It is further seen that this Appellant, being aggrieved by the order of the Certificate Officer, had preferred an Appeal as provided in Odisha Public Demand and Recovery Act questioning the legality and acceptability of the order putting the disputed land to auction sale which also stood dismissed. It is not said that the same was further challenged. Ext.1 is the original sale certificate in respect of the disputed land issued in favour of Respondent No.1. Orders passed by the Certificate Officer as well as the Appellate Forum are Ext.3 and Ext.2 respectively. Those show that the possession of the land in question had been delivered to Respondent No.1. The courts below, on analysis of the evidence, have found Respondent No.1 to be in possession of the said land pursuant to the said purchase in the auction followed by delivery of possession. On the face of the overwhelming evidence on possession of the said land by Respondent No.1, the claim of the Appellant as to the possession of the land in question has been decreed with which this Court finds no reasons/justification to differ. In the facts and circumstances of the case, this Court finding that the claim of the Appellant that he having possessed the suit land for upward of twelve (12) years has acquired title by way of adverse possession has been rightly whittled down/ repelled.

9. The Courts have taken a view that when the auction sale was conducted, as the suit was not sub-judice, the transaction standing in favour of Respondent No.1 is not hit by the principles of lis pendens.

10. For all the aforesaid, the substantial questions of law stands answered against the case/claim of the Appellant, which leads to confirm the judgment and decree passed by the Courts below, which are under challenge.

9. Resultantly, the Appeal stands dismissed. However, there shall be no order as to cost.



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