

IN THE HIGH COURT OF ORISSA AT CUTTACK

RSA No.445 of 2010

In the matter of appeal under Section 100 of the Code of Civil Procedure assailing the judgment and decree dated 04.11.2010 and 18.11.2010 respectively passed by the learned Additional District Judge, FTC No.1, Phulbani in R.F.A. No.01/36 of 2007-2009 confirming the judgment and decree dated 25.11.2006 and 12.12.2006 respectively passed by the learned Civil Judge, Senior Division, Balliguda in T.S. No.22 of 1997.

Pradeep Nayak (Since Dead) by ***Appellants***
his LRs and Another

-versus-

Aswini Kumar Nayak & Others ***Respondents***

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

For Appellants - Mr.S.P. Mishra, Sr. Advocate

For Respondents - Mr.Sanatan Das,
Advocate for R.1 to R.5
Mr.S.P. Dhal,
Advocate for R.5 to 6
Mr.S.K.Mishra,
Advocate for R.6(a) to R.5(i)

CORAM:
MR. JUSTICE D.DASH

Date of Hearing : 11.08.2022 : Date of Judgment:22.08.2022

D.Dash,J. The Appellants, by filing this Appeal under Section 100 of the Code of Civil Procedure, 1908 (for short, 'the Code'), have assailed the judgment and decree dated 04.11.2010 and 18.11.2010 respectively

passed by the learned Additional District Judge, FTC No.1, Phulbani in R.F.A. No.01/36 of 2007-2009.

By the same, the Appeal filed by these Appellants, being the unsuccessful Plaintiffs in T.S. No.22 of 1997 of the Court of the Additional Civil Judge, Senior Division, Balliguda under section 96 of the Code has been dismissed. The Appellants, as the Plaintiffs, thus have been non-suited.

It may be stated here that during pendency of this Appeal, the original Appellant No.1, having died, his legal representatives have come on record in his place as the Appellants in joining the Appellant No.2 in pursuing this Appeal. Similarly, Respondent No.6 (Defendant No.7) having expired during pendency of this Appeal, his legal representatives have come on record in his place.

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 Plaintiffs' case is that the suit lands and other lands in the locality had not been surveyed. The inhabitants of the locality were cultivating different parcels of land by clearing bushes and shrubs and making it fit for cultivation. It is stated that the predecessor of the Plaintiffs, namely, Ulla Nayak was in possession of Ac.0.08 cents of land and as such was cultivating the same. His son Laxman purchased some lands near the said land under different unregistered sale deeds from different persons, who were in cultivating possession for a long time. The sister of Laxman, namely, Sunabati had also purchased some lands nearby. After the death of Sunabati and her husband, since Sunabati had left behind no issue of their own, her brother Laxman

succeeded to her property. He possessed the same with other lands, which in total is said to be Ac.0.57 cents. He is said to be was the absolute owner of the same. Said Laxman is said to have sold Ac.0.04 cents of land to the Defendant No.6. After the death of Laxman, the Plaintiffs, being his successors, became the owners of the suit land and possessed the same as such. The Plaintiff No.2 has alienated a portion of the suit land in his possession to Defendant No.7 by registered sale deed in the year 1986. The said purchaser is in possession of the purchased land as its absolute owner. The order of mutation is said to have been challenged later. Ultimately, in the proceeding; said order has been passed by the Mutation Officer (Tahasildar) that the purchase of the land of Defendant No.7 is not valid. The property has been said to be the property of Ulaki Naik, wife of Sridhar Nayak as it stood recorded in her name in the settlement record. The Plaintiffs' further case is that they are in physical possession of the land in question described in the schedule of the plant and the purchaser, namely, Defendants 6 and 7 are also in possession of their respective purchased lands. The record of right prepared in the name of Ulki, the mother of Defendants 1 to 5 is wholly erroneous and illegal. She has no right over the property recorded under khata no.4. Laxman although was in possession of the suit land as absolute owner thereof, in the ROR, his name has been shown to be in forcible occupation. The Defendants when tried to evict the Plaintiffs from the suit land, the suit has been filed seeking the relief of declaration of right, title and interest of the Plaintiffs over the suit land and for confirmation of possession with further prayer to declare that the record of right prepared in the name of the mother of Defendants 1 to 5, i.e., Ulki Nayak as void and illegal and as such not binding on them.

4. The Defendants to 1 to 5 contested the suit. They assert that the record of right standing in the name of their mother is right and that having not been called in question for a long period is no more amenable to challenge. They assert that the note of possession as it is found in the record of right in favour of Laxman is erroneous and illegal. Laxman was never in possession of the suit land. It is stated that the Plaintiff No.1 has admitted the possession of the Defendants in a document executed by him in favour of their mother on 12.01.1984.

5. On the above rival pleadings, the Trial Court framed as many as ten issues. Answering the crucial issue as to the competing claim of right, title, interest and possession of the Plaintiffs as advanced on one hand and the Defendants 1 to 5 on the other, upon examination of the evidence and their analysis, the answer has been returned against the Plaintiffs. This has led the Trial Court to dismiss the suit.

The Plaintiffs being unsuccessful before the Trial Court, having carried the First Appeal, have failed in that move.

6. The Appeal has been admitted on 21.07.2014 to answer the following substantial questions of law:-

“i) Whether the learned trial court has committed error in law in observing that in the presence of Exts-G and L, the oral evidence regarding possession adduced by the plaintiffs becomes inconsequential?;

ii) Whether the non-framing of a separate issue on the plaintiffs’ plea of adverse possession and totally ignoring the evidence on the point of possession vitiates the findings of the learned court below?; and

iii) Whether the learned lower appellate court has committed illegality in not recording its own findings on each of the

issues including oral and documentary evidence on the plea of adverse possession?”

7. Mr.S.P.Mishra, learned Senior Counsel for the Appellants submitted that the Courts below have unnecessarily given importance to Exts.G & L and by ignoring the overwhelming evidence of possession of the suit land for a long period by the Plaintiffs have fallen in error in discarding the claim of the Plaintiffs over the suit land. He further submitted that even in the absence of any document of title standing in favour of the ancestor of the Plaintiffs with the fact remaining that by unregistered sale deeds, the transaction of sale of immovable property were going on in the locality, the Courts below ought to have held the Plaintiffs to have perfected title over the same by way of adverse possession. According to him, the evidence of possession on the basis of the unregistered sale deed, which has been recognized in the record of right by way of noting of possession in respect of the suit land being not given due weightage by the Courts below, the findings have been returned against the Plaintiffs. He, therefore, submitted that the Courts below ought to have decreed the suit. He, however, contended that all the three substantial questions of law being interlinked, this Court can answer those together.

8. Learned counsel for the Respondents, on the other hand, supported the findings of the Courts below. According to him, the Courts below having concurrently found the Plaintiffs to have failed to establish their claim of right, title, interest and possession over the suit land and as there surfaces no such perversity, those findings returned by the Courts below are not liable to be interfered with by this Court in seisin of the Second Appeal. He further submitted that the nexus between the unregistered sale deeds, as have been projected by the

Plaintiffs with the suit land has not been established and, therefore, the possession on the basis of the same by the Plaintiffs is not believable which the Courts below have rightly held. He next submitted that the suit land being not at all so described in those unregistered sale deeds, the Courts below have rightly ignored the same to be of no aid to the case/claim of the Plaintiffs. He next submitted that merely on the basis of the note of possession in the record of right, the Courts below are right in repelling the case of the Plaintiffs that they have perfected title over the suit land by way of adverse possession when all ingredients standing to be satisfied for the purpose have not been fulfilled through clear, cogent and acceptable evidence.

9. Keeping in view the submissions made, I have carefully read the judgments passed by the Courts below.

10. It is seen that the claim of the Plaintiffs over the suit land is founded upon the unregistered sale deeds admitted in evidence and marked Exts.2 to 6. These unregistered sale deeds, though are quite old, have been produced for the first time in the suit. The Settlement Operation in the area being over and record of right in respect of the suit land having been prepared, the Plaintiffs have not offered any explanation as to why these sale deeds were not projected in support of their claim over the property before the Settlement Authorities in staking their claim of recording the suit land in their favour subject to its acceptance. These documents are not with reference to any survey numbers nor even the descriptions of the lands find place therein with reference to any measurement as to length and breadth.

The note of possession as has been made in the record of right to is not said to be on the basis of said unregistered deeds. The Courts

below have concurrently held that the Plaintiffs had not adduced any convincing evidence that the disputed plot nos.164 and 165 are the land described in those unregistered sale deeds. The Plaintiffs having not produced those unregistered sale deeds before the Settlement Authority and in the order, the same has not been so indicated, the order, however, shows that the Plaintiffs had claimed these lands as to have been orally purchased, which itself brings grave suspicion on the very basis as projected.

Thus, all these facets stand against the claim of the Plaintiffs.

Given a careful reading to the averments taken in the plaint and on going through the evidence on record, the aforesaid facets being taken into account in their proper perspective, the Plaintiffs are found to have not established the alternative case of acquisition of title over the suit property by way of adverse possession.

Accordingly, the answer to the substantial questions of law is returned against the case/claim of the Plaintiffs.

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

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