

IN THE HIGH COURT OF ORISSA AT CUTTACK

RSA No.331 of 2008

In the matter of an appeal under section 100 of the Code of Civil Procedure assailing the judgment and decree dated 17.03.2008 and 05.04.2008 respectively passed by the learned Additional District Judge (F.T.), Sambalpur in R.F.A. No.12/8 of 2005-06 confirming the judgment dated 28.08.2004 passed by the learned Civil Judge (Junior Division), Rairakhol in T.S. No.22 of 2001.

Ramesh Chandra Ray ***Appellant***

-versus-

Purna Chandra Pradhan ***Respondent***

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

For Appellant - Mr.G.Mukherjee,
Sr. Advocate
Mr.P.Mukherjee, A.C. Panda, S. Patra
B. Panigrahi, S.Mukherjee
Suvalaxmi and R. Biswal

For Respondent -

CORAM:
MR. JUSTICE D.DASH

Date of Hearing : 05.01.2022 : Date of Judgment: 10.01.2022

D. Dash, J. The Appellant by filing this Appeal under Section 100 Civil Procedure Code (for short, 'the Code'), has assailed the judgment and decree dated 17.03.2008 and 05.04.2008 respectively passed by the learned Additional District Judge (F.T.), Sambalpur in R.F.A. No.12/8 of 2005-06.

By the said judgment and decree, while dismissing the First Appeal filed by the present Appellant-Plaintiff under Section 96 of the Code, has been dismissed and thereby the judgment and decree passed

by the learned Civil Judge, (Junior Division), Rairakhol in T.S. No.22 of 2001 have been confirmed. The present Appellant-Plaintiff has been non-suited.

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. The Plaintiff's case is that the land described in Schedule-A of the plaint stood recorded in the name of Sradhakar Pradhan, the father of the Defendant. It is stated that said Sradhakar, about forty years before the suit, had delivered the possession of the suit land to the father of the Plaintiff. The Plaintiff's father, by constructing a house over the land, has been residing with his family and the Plaintiff is residing there in the said house with his family to the knowledge of the Defendant. It is further stated that neither the father of the Defendant nor any of his family member had objected this act of possession of the land in Schedule-A by the Plaintiff or his father at any point of time. It is thus claimed that the Plaintiff has acquired tenancy right over the said land by way of adverse possession. On 08.06.2000, the Defendant filed a OLR proceeding bearing No.17 of 2000 to evict the Plaintiff from the Schedule-A land. The Competent Authority disposed of the said proceeding instructing the parties to take shelter before the appropriate Court of law. In that proceeding through the Revenue Inspector, Rampur, a report had come to be tabled that the Plaintiff has been in possession of the suit land for a period thirty-five years by then. The Plaintiff, therefore, has filed the suit for declaration of his right, title, interest and confirmation of his possession.

4. The Defendant, coming to contest the suit, in his written statement, has denied the factum of possession of the suit land by the Plaintiff since the time of his father as stated in the plaint. It is also stated that his father had never delivered the possession of the suit land to the Plaintiff and he was not in possession of the same by constructing a house and residing there with his family members. It is the case of the Defendant that Rama Naik the maternal grand-father of the Defendant was the sabik recorded tenant in respect of the suit land and he was possessing the land by residing thereon with his family having constructed a house over a portion of the same and using rest portion as bari. Ram Naik died in the year 1968 and his wife Raibari died some time in the year 1975 or 1976. In that house, Raibari was residing and the mother of the Defendant, namely, Brundabati being the sole legal heir of Rama Naik came to reside there in the house with her husband and children till her death. She died in the year 1980 and then the Defendant succeeded to the said property.

It is stated that some time in the year 1976, accepting the request of the father of the Plaintiff, the Defendant permitted him to use the suit land as threshing floor with the condition that on his return, the Plaintiff's father would vacate the suit land and at that time, the Defendant was residing in his place of posting at Padampur. The Defendant alleges that the Plaintiff, in connivance with the Major Settlement Authority has been successful in getting his name entered in the remarks column of record of right of the suit land as to be in possession of the same. The record of right was published in the year 1992. The Plaintiff then had requested the Defendant to transfer the suit land on receiving the market value to which the Defendant did not agree. Thereafter, in the year 1996, for the first time, the Plaintiff

constructed a thatched house in order to create evidence in claiming his possession. The Defendant admits to have initiated a proceeding under section 23-A of the OLR Act, which according to him ended in compromise. He then again initiated a proceeding under section 23-A of the said Act as the Plaintiff did not vacate as per the compromise in the earlier proceeding. On 25.06.2001, the Competent Authority dropped the proceeding holding it to be not maintainable and accordingly directed the parties to take shelter in the appropriate court of law. It is the case of the Defendant that the father of the Plaintiff was using the suit land as threshing floor with his permission and thus, there arises no question of his acquiring title over the suit by way of adverse possession.

5. On the above rival pleadings, the Trial Court has framed five issues. Answering the crucial issue, i.e, issue no.4 as to the claim of the Plaintiff regarding perfection of right, title and interest over the suit land by way of adverse possession; the Trial Court, on examination of the evidence and their analysis in the backdrop of the settled position of law, has held that the Plaintiff has failed to prove his claim over the suit land as such.

The unsuccessful Plaintiff, having carried the First Appeal, has also been unsuccessful.

6. Mr.G.Mukherjee, learned Senior Counsel for the Appellant submits that the Courts below have not rightly answered that issue no.4 as to the acquisition of title over the suit land by the Plaintiff by way of adverse possession. He submits that on the face of the overwhelming evidence of open and continuous possession of the suit land by the Plaintiff since the time of his father for upward of forty years, as it was

within the knowledge of the Defendant when such possession was in exercise of all the rights of ownership from the side of the Plaintiff, the Courts below ought to have answered the said issue in favour of the Plaintiff. This according to him is the substantial question of law that stands for being answered in this Appeal.

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

8. Admittedly, Sradhakar, the father of the Defendant was the recorded tenant of the suit land. It is the case of the Plaintiff that Sradhakr had delivered the possession of the suit land to his father forty years before the suit and since then, his father has been possessing the suit land by putting up a house over the same and residing there with his family, which is so continuing in the hands of the Plaintiff. When it is stated by the Plaintiff that Sradhakar, the father of the Defendant had given delivery of possession of the suit land to the father of the Plaintiff, nothing further is stated as to the reason behind the same. It is also not stated that Sradhakar, with an intention had put Plaintiff's father in possession over the suit land as its owner in his place. Under the circumstance, the possession of the suit land by the father of the Plaintiff even if accepted is to be taken to be permissive in nature and that nature has to continue all along unless it is established by the Plaintiff that said nature of possession took the turn as if adverse to the true owner within the knowledge of that true owner. The pleadings as also the evidence are silent on the score that after the father of the Plaintiff entered into possession of the suit land, at any subsequent time, he from his side had expressed his intention by substituting any such conduct or otherwise that his possession of the suit land was in

denial of the title of the father of the Defendant claiming himself to be the owner of the same to the knowledge of the father of the Defendant.

It is the settled position of law that mere long possession of the land by a person does not enure to his benefit as to acquisition of title over the said land by adverse possession. The classical ingredients required to be proved for the purpose are 'nec vi', 'nec clam' and nec precario. The possession by the possessor must be open and continuous by claiming that he is the owner of the same exhibiting the hostile animus in claiming the property to be his own by denying the title of the true owner of his knowledge for upward of the prescribed period.

The Courts below, upon vivid discussion of the evidence on record both oral and documentary, have arrived at a finding that the Plaintiff has not been able to establish all these ingredients in order to sustain his claim of acquisition of title over the suit land by way of adverse possession. The discussion of evidence as has been made by the Courts below are found free from the vice of perversity and this Court finding of the Courts below on that score are held to be well in order.

9. In view of the aforesaid, this Court is not in a position to accept the submission of the learned Senior Counsel for the Appellant that the Appeal merits admission to answer any substantial question of law.

10. In the result, the Appeal stands dismissed. The Judgments and decrees passed by the Courts below stand confirmed. There shall, however, be no order as to cost.

As the restrictions due to resurgence of COVID-19 situation are continuing, learned counsel for the parties may utilize a printout of the order available in the High Court's website, at par with certified copy,

subject to attestation by the concerned advocate, in the manner prescribed vide Court's Notice No.4587 dated 25th March, 2020 as modified by Court's Notice No.4798 dated 15th April, 2021.

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



Basu