

IN THE HIGH COURT OF ORISSA AT CUTTACK

RSA No.357 of 2007

In the matter of an appeal under section 100 of the Code of Civil Procedure assailing the judgment and decree dated 04.05.2007 and 18.06.2007 respectively passed by the learned District Judge, Keonjhar, in R.F.A. No.38 of 2006 setting aside the judgment and decree passed by the learned Civil Judge, Senior Division, Champua in T.S. No.7 of 1999.

Dinabandhu Naik

....

Appellant

-versus-

Gopal Chandra Sahoo

....

Respondent

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

For Appellant

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Mr.R.K. Mohanta, S.K. Dwibedi
K. Mohanty
Advocates

For Respondent

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Mr.R.K. Kar, S.C. Samantray,
U.K. Sahoo &U.N. Sahoo
Advocates

CORAM:

MR. JUSTICE D.DASH

Date of Hearing : 04.04.2022 :: Date of Judgment:18.04.2022

The Appellant by filing this Appeal under Section 100 Civil Procedure Code (for short, 'the Code'), has assailed the judgment and decree dated 04.05.2007 and 18.06.2007 respectively passed by the learned District Judge, Keonjhar, in R.F.A. No.38 of 2006.

By the same, the Appeal filed by the Respondent (Plaintiff) under section 96 of the Code has been allowed and the judgment and decree passed by the learned Civil Judge, Senior Division, Champua in T.S. No.7 of 1999 have been set aside and thereby the right, title,

interest and possession of the Respondent (Plaintiff) over the suit land has been declared and the Appellant (Defendant) has been permanently restrained to enter upon the suit land.

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 case of the Plaintiff is that the land under Hal Plot No.2508 under Hal Khata No.86 corresponding to Sabik Plot No.912 and Sabik Khata No.78 respectively belonged to one Bansidhar Naik, Suna Naik, Radhu Naik, Jadu Naik and Kasi Naik. It is stated that they sold the land by registered sale deeds way back in the year 1970 and 1972 to Pranabandhu Dehury by obtaining permission from the Competent Authority in Revenue Misc. Case No.23 of 1974 and sold the suit land to the Plaintiff and delivered the possession to him. It is stated that in the Hal Settlement, the land was recorded in the name of the Plaintiff under Khata No.86, Plot No.2508 measuring Ac.0.23 decimals. But, the Defendants having no right, title and interest disturbed his possession in claiming the suit land to be their own. Therefore, the suit has come to be filed.

4. The Defendant, in the written statement, asserted that the suit land is his ancestral property and sale deeds executed in favour of Pranabandhu Dehury is said to be benami transaction. According to him, it is the Plaintiff, who had actually purchased the suit land in the name of Pranabandhu. The permission in favour of Pranabandhu in Revenue Misc. Case No.23 of 1974 is said to have been granted without following the procedure, as provided in law. It is also stated that the land under Hal Plot No.2508 does not correspond to the land under Sabik Plot No.912.

5. On the above rival pleadings, the Trial Court, having framed seven issues, has answered that the sale deeds executed in favour of Pranabandhu and thereafter by Pranabandhu in favour of the Plaintiff are all benami transactions. The suit thus being dismissed, the unsuccessful Plaintiff having carried the First Appeal, has been unsuccessful in obtaining the decree as prayed for by him in the suit.

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

“Whether finding of the lower Appellate Court to the effect that the suit transaction was not a benami transaction is vitiated by non-consideration of evidence on record?”

7. Mr. R.K. Mohanta, learned counsel for the Appellant submitted that the Trial Court having analyzed the evidence on record in great detail and upon their evaluation when had arrived at a conclusion on fact that the transactions are benami, the First Appellate Court, without any compelling and justifiable reasons by merely taking a different view, ought not to have set aside the said finding and that is not so permissible in law. He further submitted that even in doing so, the First Appellate Court has not properly considered the evidence on record from all the angles.

8. Mr. R.K. Kar, learned counsel for the Respondent submitted all in favour of the findings recorded by the First Appellate Court. He further submitted that the First Appellate Court, as duty bound, has gone for reappraisal of evidence on record and by giving cogent reasons, has disturbed the said finding of the Trial Court in finally saying that the transactions are not benami transactions.

9. Keeping in view the submissions made, I have read the judgments passed by the Courts below. I have also carefully gone through the pleadings and the evidence let in by the parties.

10. Before undertaking the exercise of answering the substantial question of law in addressing the rival submission, one legal aspect which appears to have been lost sight of by the Courts below needs examination.

The Plaintiff filed the suit for declaration of his right, title and interest over the suit land by claiming to have purchased the suit land from Pranabandhu Dehury in the year 1975 after obtaining permission from the Competent Authority as required under the law prevailing in the Area on that subject, i.e, Orissa Scheduled Areas Transfer of Immovable Property (By Scheduled Tribes) Regulations, 1956 (hereinafter called as “the Regulation 2 of 1956”). Pranabandhu is said to have purchased it from the original owners. Fact remains that prior to that, at no point of time, any proceeding under Regulation 2 of 1956 had been initiated by the Defendants to declare that the transaction in favour of Pranabandhu was a benami one at the instance of this Plaintiff so as to ultimately own the land and be the sole beneficiary and that the transaction in favour of Pranabandhu is an eyewash with the sole aim and intent to circumvent the provision of the Regulation 2 of 1956 in obtaining permission for the same and thus in violation of the provision contained in the Regulation 2 of 1956 in that regard. Admittedly, the Defendants have also not approached the Competent Authority as provided in Regulation 2 of 1956 to declare both the sale deeds as void on the available grounds known to law wherein the Competent Authority has all the jurisdiction to adjudge all these aspects and rule upon it. The Defendants, in the facts and circumstances as projected in the written statement ought to have taken

recourse to the provisions of the Regulation 2 of 1956 in obtaining the relief which of course has not been resorted to.

The matter having stood thus, now in the suit filed by the Plaintiff, the Defendants is taking the plea that the Plaintiff had actually got the land purchased or shown to have purchased from the original owners in the name of Pranabandhu to avoid the permission as required as that could not have been granted had it been so moved and then from him, he has been able to ultimately purchase by the registered sale deed by obtaining the permission.

11. The suit being filed in the year 1999, the defence has been tendered thereafter in impeaching these deeds of the year 1970 to 1974. The Benami Transaction (Prohibition) Act, 1988 has come into force with effect from 05.09.1988 and as per the provision contained in section 4(1) of the said Act, such a defence is completely barred under law when the defence has been tendered on or after the date of coming into force of the Act. This bar, however, would not have stood on the way of the Competent Authority under the Regulation 2 of 1956 on its competency to so adjudicate and rule upon.

In that view of the matter, the defence laid by the Defendants stands vulnerable. Accordingly, the substantial question of law does not survive for consideration.

12. In the wake of aforesaid, the Appeal stands dismissed. There shall however be no order as to cost.

(D. Dash),
Judge.