

IN THE HIGH COURT OF ORISSA AT CUTTACK

RSA No.161 of 2011

In the matter of an appeal under section 100 of the Code of Civil Procedure assailing the judgment and decree dated 26.03.2011 and 08.04.2011 respectively passed by the learned Civil Judge, Senior Division, Karanjia in R.F.A. No.1/29/71 of 2007-2006-2003 modifying the judgment and decree dated 24.09.2003 and 23.10.2003 respectively passed by the learned Civil Judge, Junior Division, Karanjia in T.S. No.11 of 2001.

Kartika Chandra Sahu

....

Appellant

-versus-

Rabindra Ram Julia & Others

....

Respondents

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

For Appellant

-

Mr.M. Mishra, Sr. Advocate
Ms.M. Mishra, B.K. Mishra,
S.B. Mohanty & G.C. Bhuyan
(Advocates)

For Respondents

-

Mr.A.K. Nanda
Advocate for R.5

CORAM:

MR. JUSTICE D.DASH

Date of Hearing : 29.03.2022 :: Date of Judgment:18.04.2022

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 26.03.2011 and 08.04.2011 respectively passed by the learned Civil Judge, Senior Division, Karanjia in R.F.A. No.1/29/71 of 2007-2006-2003.

By the same, the First Appellate Court in the Appeal filed by the Respondent No.1 (Defendant No.5) under Section-96 of the Code assailing the judgment and decree dated 24.09.2003 and 23.10.2003 respectively passed by the learned Civil Judge, Junior Division, Karanjia in T.S. No.11 of 2001 although has indicated in the order that the Appeal has been allowed in part, yet it is in entirety as it has set aside the judgment and decree passed by the Court below.

To clarify the error, it may be stated there that the suit land as described in the plaint measures Ac.0.05 decimals. The Appellant-Plaintiff claims that the purchase was to the extent of Ac.0.09 decimals to Ac.0.05 decimals = Ac.0.14 decimals and as Ac.0.09 decimals has been recorded in his name, he has no grievance on that score. It is his case that the dispute is now on that Ac.0.05 decimals of land over which his possession is under threat and the cloud over his right, title and interest in respect of the suit land, i.e. Ac.0.05 decimals needs to be removed.

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 is the subject matter of the suit stood recorded in the name of Barju Ram Julia and Sarju Ram Julia, sons of Krushna Ram Julia as per the sabik settlement record when Krushna Ram Julia had three sons, namely, Barju, Sarju and Manu. It is stated that Manu Ram Julia, who is the husband of Defendant No.1 and father of Defendant Nos.2 to 4 thus did not find place in the settlement record of right but the fact remains that after the death of Krushna, his three sons being the legal heirs of

Krushna succeeded to his properties. All the three are dead. Rabindra Ram Julia is the only son of Barju Ram Julia and he is Defendant No.5. Sarju died leaving no issue and his wife is also dead. Manu's legal heirs and successors are Defendants 1 to 4.

It is stated that after the death of Krushna, his three sons got themselves separated from each other and the suit land had fallen to the share of Manu. On 13.04.1971, Manu being in possession of the suit property, sold the same to the Plaintiff by registered sale deed for a consideration of Rs.900/- after obtaining permission from the Competent Authority in SRC No.68/71. The sale he made was to meet the need towards his treatment expenses for his ailment. That Manu having sold the suit land gave delivery of possession of the same to the Plaintiff. So, the Plaintiff claims to be in possession of the suit land since then openly and peaceful. The possession is said to be continuous to the knowledge of the Defendants by exercising the rights as the absolute owner thereof. The Plaintiff constructed a house over the suit land where he is now residing with his family. He applied for mutation of the suit land in his name as it was not so recorded in the Record of Right. Pursuant to the same, Mutation Case No.1538 of 1991 was initiated and order was passed. But he was surprised when later he could know that only Ac.0.09 decimals of land has been mutated in his name from out of the total of Ac.0.14 decimals as applied for and the rest area of Ac.0.05 decimals of land has been recorded in the name of Barju Ram Julia and Sarju Ram Julia. Taking into account the above recording of Ac.0.05 decimals of land in the name of Barju and Sarju, the Defendants started creating trouble over the peaceful possession of the suit land by the Plaintiff.

4. The Defendant No.5 contested the suit. In the written statement, while traversing the averments made in the plaint, it has been stated that the suit land had never been possessed by Manu Ram Julia, the husband of Defendant No.1 and the father of Defendants 2 to 5. It is stated that the same was in possession of his father Barju and uncle Sarju. As Sarju died leaving no issue of his own the Defendant No.5 being the only son of Barju possessed the suit land. The Plaintiff's claim of purchase of suit land from Manu on 13.04.1971 by registered sale deed obtaining permission from the Competent Authority on payment of valuable consideration is refuted and so also the delivery of possession of the suit land by Manu to the Plaintiff. It is stated that the Plaintiff is not in possession of the suit land by putting up a house over there. It is stated that the deed which has been filed by the Plaintiff is a forged one when he after the death of his father and uncle has been in continuous possession of the suit land. It is further claimed by the Defendant No.5 that the suit land has been given to his father by his maternal uncle Jaya Dehury out of love and affection. But even then in the year 1930/31, in the settlement operation, the land was erroneously recorded in the name of his father Barju and Sarju by the Settlement Authority instead of recording it in the name of Barju alone. He advanced a counter claim for declaration of his right, title and interest with further prayer to declare the registered sale deed dated 13.07.1971 projected by the Plaintiff as the document of title in respect of the suit land as void.

5. Faced with the rival pleadings, the Trial Court has framed seven issues. Answering issue no.4, the most crucial issue as it concerns with the case of the Plaintiff that he has right, title and interest and possession over the suit land, upon discussion of evidence and their evaluation, the answer has been recorded that the Plaintiff has the right, title and

interest over Ac.0.14 decimals of land which includes the suit land extending to Ac.0.05 decimals. The suit was finally been decreed

The First Appellate Court being moved by the Defendant No.5, aggrieved by the judgment and decree passed by the Trial Court has allowed the Appeal. The finding that the land measuring Ac.0.09 decimals the Plaintiff has acquired by way of purchase being upheld, the claim of the Plaintiff as to acquisition of title by way of adverse possession over Ac.0.05 decimals of land which is the subject matter of the suit has been negated.

6. The Appeal has been admitted for answering the following substantial questions of law:-

“(a) Whether the judgment of the appellate court is vitiated for non-consideration of either oral or documentary evidence on record so far as adverse possession is concerned?;

(b) Whether the appellate court is not giving a finding relating to title of the plaintiff on the basis of his purchase of case land from the rightful owner coupled with delivery of possession?; and

(c) Whether the non-consideration of Ext.2 the affidavit wherein the defendants have admitted the title and possession of plaintiff has vitiated the appellate judgment?”

7. Learned Counsel for the Appellant submitted that the First Appellate Court is not justified in holding that the Plaintiff has no title over the suit land on the basis of his purchase of the case land from the rightful owner followed by delivery of possession. She submitted that in this connection, the First Appellate Court since has not considered Ext.2, affidavit; wherein the Defendant have admitted the title and possession of the Plaintiff, the said finding is vitiated. She also submitted that the factum of long possession of the suit land as its

rightful owner in open, peaceful and continuous manner has been ignored by the Appellate Court for no such reason.

8. Learned Counsel for the Respondent on the other hand supported the finding and judgment and decree passed by the First Appellate Court. He submitted that the First Appellate Court on the basis of just and proper examination and evaluation of evidence on record, both oral and documentary has rightly said that the Plaintiff has got title over 9 decimals of land on the basis of his purchase which has subsequently been recorded in the name so far the suit land i.e. 5 decimals is of area is concerned. He has failed to prove his case for acquisition of title by adverse possession. Keeping in view the submissions made, I have carefully read the judgments passed by the Courts below. I have also gone through the plaint, written statement, depositions of all the witnesses examined as well as the documents admitted in evidence from both sides and marked exhibits.

9. In course of the exercise as stated above, this Court comes across an important document exhibited from the side of the Defendant which is Ext.E. It is an order passed by the Competent Authority, i.e., Sub-Collector, (Panchpir), Karanjia in a proceeding under Section-3A(1) of the Orissa Scheduled Areas Transfer of Immovable Property (By Scheduled Tribes) Regulations, 1956 (for short, 'the Regulation 2 of 1956'). The above Regulation 2 of 1956 has been promulgated in the State so far the Scheduled Areas are concerned, in exercise of the power conferred by the sub-paragraph (2) of paragraph-5 of the Fifth Schedule to the Constitution by the Governor of Orissa. The entire district of Mayurbhanj in the State of Orissa has been specified in the scheduled Areas. As per the regulation-3A, where a person is found to

be in unauthorized occupation of a immovable property of a member of Scheduled Tribe by way of trespass or otherwise, the Competent Authority may, either on an application by the owner or any person interested therein or any information received from the Gram Panchayat or on his own motion, after giving the parties concern an opportunity of being heard, order ejectment of the person so found to be in unauthorized occupation and shall cause restoration of possession of such property to the said member of the Scheduled Tribe or to his heirs. The restoration means actual delivery of possession.

This Ext.E, the order-sheet of the Sub-Collector in Regulation Case No.10 of 2001 reveals that a proceeding being initiated alleging the present Appellant to be in forceful occupations of the suit land, finally by order dated 29.11.2001, the Competent Authority being satisfied that the Petitioners therein belonging to the Scheduled Tribe Community are the owners of the suit land which is unauthorized occupation of the present Appellant who had been arraigned as the Opposite Party in the said proceeding, order for delivery of possession of the suit land has been passed. The Sub-Collector thereby has issued warrant to the Tahasildar, Karanjia for effecting the delivery of possession of the suit land in terms of the order. This much is the evidence tendered in the suit. The documents as to further developments in that proceeding filed before this Court with the submission had neither been filed in any of the Courts below nor any oral evidence has been adduced in that regard.

The Plaintiff has been examined in the present suit as P.W.8. It may be stated here that neither in the plaint nor in his examination-in-chief, anything has been said by the Plaintiff (P.W.8) about such order being passed by the Competent Authority in Regulation Case No.10 of

2001 or about taking further challenge to that. During cross-examination, he has gone to state that he has no knowledge that the Defendant No.1 had filed any such Regulation case against him and that an order has been passed in the said proceeding on 29.11.2001. No such move, as per law, has been made also before the First Appellate Court. The Regulation-2 of 1956, contains the provision for challenging such orders by carrying appeal. Thus, on the face of the same, the order under Ext.E, the present suit for declaration of title over the suit land which was the subject matter of that Regulation-2 proceeding, confirmation of possession and permanent injunction is squarely not maintainable, as the Civil Court cannot sit over to judge the validity of such orders, which would stand tested by the forums available under the Regulation. In that view of the matter, in my considered view, the suit filed by the Plaintiff with the relief(s) claimed being not maintainable, the Courts below on this ground alone should have non-suited the Plaintiff.

Having said as above, this Court finds no more the necessity to delve upon the matter in searching out the answer to the substantial questions of law by addressing the rival submission as for the instant suit, those do not survive .

10. In the result, the Appeal stands dismissed. No order as to costs.

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