

IN THE HIGH COURT OF ORISSA AT CUTTACK

RSA No.305 of 2008

In the matter of appeal under Section 100 of the Code of Civil Procedure assailing the judgment and decree dated 18.08.2008 and 30.08.2008 respectively passed by the learned District Judge, Puri in R.F.A. No.120 of 2003 confirming the judgment and decree dated 26.08.2003 and 08.09.2003 respectively passed by the learned Additional Civil Judge, Senior Division, Puri in T.S. No.86/294 of 2001-1996.

Sankarlal Patwari

....

Appellant

-versus-

Krushnapriya Mohapatra

....

Respondent

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

For Appellant

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Mr.R.K.Mohanty, Sr. Advocate
Mr.D.Mishra, A.P.Bose,
S.N. Biswal, N. Das,
S. Mohanty, S.K. Mohanty,
S. Mohanty, P. Jena and
D.Varadwaj
(Advocates)

For Respondent

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Mr.Ayusman Mahanta
(Advocate)

CORAM:

MR. JUSTICE D.DASH

Date of Hearing : 02.08.2022 : Date of Judgment:22.08.2022

D.Dash,J. The Appellant, by filing this Appeal under Section 100 of the Code of Civil Procedure, 1908 (for short, 'the Code'), has assailed

the judgment and decree dated 18.08.2008 and 30.08.2008 respectively passed by the learned District Judge, Puri in R.F.A. No.120 of 2003.

By the same, the Appeal filed by the present Appellant, as the unsuccessful Plaintiff in the Court of the learned Additional Civil Judge, Senior Division, Puri in T.S. No.86 of 294 of 2001/1996 under section 96 of the Code has been dismissed and thereby the judgment and decree passed by the Trial court in the above-noted suit have been confirmed. The Suit filed by the Appellant (Plaintiff) arraigning the Respondent, as the Defendant, seeking declaration of his right, title and interest over the suit property and recovery of possession as well as the mandatory and permanent injunction has been dismissed.

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 Plaintiff's case is that the suit property originally belonged to Lord Shri Shri Jagannath Mahaprabhu, represented through Katarpa Matha, Prasanna Saraswati under Salipur Police Station in the District of Cuttack. Mahanta Anandaram Das, Guru Late Kajaram Das residing at Kundheibenta Sahi in the town of Puri were the Marfatdars of the said Deity and as such were managing the affairs of the branch of Matha known as Khaki Akhada Math situated at Kundheibenta Sahi in Puri town. It is stated that in order to meet the legal necessity of the Deity, the suit land along with other lands had been permanently leased out to the father of the Plaintiff for a consideration of Rs.5000/- with annual rent of Rs.100/-. The leased was evidenced by a registered document dated 25.01.1950. It is further stated that pursuant to the said lease, the father of the Plaintiff took possession of the said leasehold land. He then

raised structure, planted trees and remained in enjoyment of the said property while going on paying rent to the Matha. The father of the Plaintiff, namely, Chiranjilal Patwari when died, the present Plaintiff, as his legal heir, continued to possess the suit property. It next stated that while possessing the leasehold land, the Plaintiff was also possessing the excess area of Ac.0.064 decimals towards the south of plot nos.255 and 239. Since the leasehold was Khakiakhada Math “Amrut Manohi”, the intermediary estate vested with the State on 18.03.1974, the Plaintiff having acquired the status of occupancy raiyat under ex-intermediary is said to have been continuing to enjoy the property under the same status under the State despite such vesting and since then. It is stated that the Plaintiff in the year 1978 applied to the Tahasildar, Puri for acceptance of the rent from him in respect of the leasehold property. The application was registered as Misc. Case No.616 of 1978. It was, however, then dropped. On 10.01.1990, the Plaintiff again made an application to the Tahasildar, Puri for the same purpose which is stated to be pending. The Plaintiff’s further case is that after the death of Mahanta Marfatdar in the year 1951, one Joshamani Dibya succeeded him and later on one Rama Prasanna Das became the interim trustee of that Khakiakhada Math. Joshamani Dibya was managing the affairs of Matha and during that period, he had created several lease papers in order to oust the father of the Plaintiff from the suit property. So, the trustee initiated a proceeding under section 25 of the Orissa Hindu Religious Endowment Act, 1951 before the Endowment Commissioner and it was in the year 1969 and stood registered a case as O.P. Case No.38 of 1969 questioning the validity of the lease. The prayer was to evict the father of the Plaintiff from the leasehold. The Endowment Commissioner passed an order for eviction and accordingly had issued

requisition to the Collector, Puri. The leasee then moved this court by carrying a writ application, which was numbered as OJC No.894 of 1970. The matter then was remanded to the Commissioner of Endowment for fresh disposal according to law. However, in view of the vesting of the estate, the case was ultimately dropped. It is further stated that the interim trustee had created certain void lease in favour of the vendor of the Defendant and on the strength of said void lease, the Defendant obtained a registered sale deed from the leasee in respect of the suit property in the year 1984. Similarly, other properties had been sold by the vendor of the Defendant to two others. It is stated that the Defendant, by virtue of the registered sale deeds dated 12.06.1984 that she had obtained from her vendor had no such right over the property. When the Defendant illegally started raising construction over the suit property, the Plaintiff was compelled to file the suit.

4. The Defendant No.1, in her statement, while traversing the plaint averments besides raising objection as to the maintainability of the suit in general and without joining the necessary parties; lack of cause of action etc, has stated that the Plaintiff's father had never got any lease of the suit land at any point of time. None had granted lease of the suit property in favour of the Plaintiff's father. She also stated that at no point of time, the possession of the suit property had been delivered to the Plaintiff's father. The documents in this regard are said to be void and the father of the Plaintiff is said to have derived no interest over the property in question. The Defendant also challenged the vague description of the suit property as given in the plaint. It is further stated that the so-called lease was never in possession of excess of land of Ac.0.064 decimals towards south of plot nos.255 and 239 to the knowledge of all concerned. It is stated that the estate vested with the

State free from all encumbrances with effect from 18.03.1974, but the Plaintiff had never acquired the status of occupancy raiyat under ex-intermediary and continued as such under the State since the date of vesting. It is pleaded that no zamanbadi was submitted by the ex-intermediary of the Plaintiff or his father. The Plaintiff was never accepted nor recognized as tenant by the State. The case initiated under Orissa Estate Abolition Act at the behest of the Plaintiff, are said to have been rightly rejected. It is stated that neither the father of the Plaintiff nor the Plaintiff was ever in possession of the suit property as described in the schedule of the plaint. Joshamani Dibya while was the defector/trustee of the institution in due course for proper management and benefit of the Deity had leased out the suit property to the vendor of the Defendant on 05.03.1962 and the vendor of the Defendant was possessing the suit property. He had sold the same by registered sale deed dated 12.06.1984 to the Defendant and the Defendant being delivered with the possession of the same is now continuing to occupy it as occupancy raiyat. It is the case of the Defendant that the house which is standing over the suit land has been assessed by the Puri Municipality for payment of holding tax, which the Defendant is paying. It is said that the Plaintiff is unnecessarily creating disturbances over the suit property of the Defendant falsely claiming it to the leasehold land and to be in his possession.

It is also stated that the suit property along with other properties were the properties of Katarpa Math and one Rama Prasanna Das was the trustee of the said Math. Anadiram Das had never acted as trustee. The property in question was lying fallow yielding no income to the institution. So, the manager leased out the property to one Govinda Panda on 5.3.1962 for carrying out agricultural and horticulture

activities. The tenancy was created by acceptance of rent and delivery of possession. Govinda reclaimed the land by spending money. It is further stated that Govinda, for his legal necessity, has transferred the suit land in favour of the Defendant by executing two registered sale deeds and he having delivered possession of the same to the Defendant, is now continuing to possess the same having a pucca house there. The estate of intermediary is stated to have vested with the State on 18.03.1974. It is asserted that on the date of vesting, Govinda, the vendor-Defendant was in possession of the suit land as a tenant. Thus having the occupancy status under the State, the Defendant No.1 has made the building which has been assigned with holding number and for which holding tax has also been assessed by the Municipality. The Defendant is paying the holding tax accordingly. It is stated that Defendant is possessing the property as having right of occupancy but as per the Government decision, the property has been recorded in the name of Shri Shri Jagannatha Mahaprabhu Bije, Puri Marfat Mandir Parichalana Committee, Puri.

5. On the above rival pleadings, the Trial Court, has framed eleven issues. Proceeding to answer those issues, the Trial Court, upon examination of the evidence and their evaluation at its level, has returned the findings which are the followings:-

“A. There is miss-description of the suit schedule property;

B. The Plaintiff has no right, title, interest and possession over the suit property and on the other hand, the Defendant has the title over the same; and

C. The suit is bad for non-joinder of necessary party.”

Having held, as above, answering the other issues which are consequential thereto, the suit has been dismissed.

6. The successful Plaintiff then having moved the First Appellate Court, has ultimately failed to get any relief in the suit filed by him. The First Appellate Court, although confirmed the dismissal of the suit; however, held that the suit is not bad for improper description of the property. It has also been held that the suit is not bad for non-joinder of necessary party. But having said this, as the First Appellate Court on the important issue relating to the right, title and interest of the Plaintiff, as claimed over the suit property, answered against the Plaintiff, the Plaintiff remained unsuccessful.

7. The Appeal has been admitted on 27.11.2008 to answer the following substantial questions of law:-

“a. Whether the 1st Appellate Court has erred in law in making out a third case that the disputed and was leased out in favour of the defendant, even though that was not the case of the defendant?”

b. Whether the 1st Appellate Court has committed an error in not accepting the document, such as, eviction notice issued by the Katarpa Math against the appellate and in not considering the lease deed produced by the plaintiff-appellant, marked as Ext.2 during trial of the suit.”

8. Mr.R.K.Mohanty, learned Senior Counsel for the Appellant submitted that the First Appellate Court has fallen in error by not answering the crucial issue as regards the right, title and interest of the Plaintiff and possession of the Plaintiff over the suit property in favour of the Plaintiff. He further submitted that when the property has vested with the State free from all encumbrances and as the property had been leased out to the father of the Plaintiff, as occupancy raiyat, he has acquired said status. He further submitted that when the possession of the suit property by the Plaintiff has been established not only through

oral evidence but also the document proved from the side of the Plaintiff that he being in possession was directed to be evicted therefrom; on that basis itself, the Courts below ought to have decreed the suit for injunction when the Defendant's claim over the property is not at all cognizable in the eye of law and that too has also not been found out by the First Appellate Court. He, therefore, submitted that it a fit case where the Courts below on the basis of the evidence as obtained ought to have decreed the suit of the Plaintiff granting the mandatory injunction as well as permanent injunction, as prayed for.

9. Learned counsel for the Respondent submitted all in favour of the concurrent findings of the Courts below on question of right, title, interest and possession of the Plaintiff as claimed to acquire over the suit property in the negative. It was submitted that the evidence on record, being properly scanned when clearly lead to a conclusion that the suit property was never the property as finds mention in the leased deed proved from the side of the Plaintiff, the claim of the Plaintiff that the possession of the suit property has flowed therefrom is not at all acceptable. He further submitted that the Plaintiff has pleaded that the excess area is a part of land under sabik plot nos.239 and 255 when admittedly sabik plot no.239 does not form part of the property shown in the so called lease deed and he having not stated as to when the possession of the said property was taken over by merely stating that he is in possession of the hal plot no.111 and as that hal plot corresponds to sabik plot nos.255 and 252 and not sabik plot no.239, the claim of possession of the suit land by the Plaintiff is not at all acceptable. In view of the above, he strenuously contended that the claim of the possession of the Plaintiff asserted that in the plaint is not at all acceptable. He also submitted that the application of the Plaintiff for

settlement of the land after vesting having been rejected, in view of the evidence on record, the Courts below has rightly non-suited the Plaintiff. He further submitted that the cross-objection filed by the Defendants is to be allowed restoring the finding of the Trial Court in respect of the issue nos.3 and 5 that the suit is bad non-joinder of necessary party and the property in suit has not been properly described.

10. Keeping in view the submissions made, I have carefully read the judgments passed by the Courts below. I have also gone through the plaint and written statement as well as the depositions of the witnesses and have perused the document admitted in evidence from both sides.

11. The Plaintiff claims to have got the suit land and other contiguous land on lease. The suit land as shown in the schedule extends to an area of Ac.0.60 decimals under sabik khata no.255 as corresponding to hal plot no.111. It is stated that pursuant to the lease, the possession of the leasehold land was taken over. The Plaintiff thus states that the suit land measuring Ac.0.60 decimals with other lands had been leased out to his father. The Defendant claims that the said land had been leased out in favour of his vendor. Here, both sides claim possession on the basis of their respective lease.

Fact remains that the property has vested with the State free from all encumbrances with effect from 18.03.1974. Thereafter, neither the Plaintiff nor the Defendant has been settled with the land. Therefore, the First Appellate Court has rightly held that here in the case, the Plaintiff as well as the Defendant has failed to establish their title over the suit property as they claim. In saying so, it has also rightly negated the claim of the Plaintiff, which had been raised in a half hazard manner that he has the title over the suit property by adverse possession in further

saying that in the absence of the true owner of the land and when the true owner of the land is not a party to the suit, no such examination is also permissible.

12. Now, coming to the question as to if the Plaintiff can be granted with a decree of injunction, the examination stands with regard to the possession of the suit property at an anterior point of time by the Plaintiff, which is said to have been forcibly taken over by the Defendant to some extent. The First Appellate Court has discussed this matter at paragraph-13 of its judgment. Being the final Court of fact, it can be seen therefrom that the evidence on record has been thoroughly scanned. The evidence of the witnesses examined from the side of the Plaintiff are not very specific with regard to the suit land. The land, which was the subject matter of the proceeding before the Commissioner of Endowment with reference to the survey numbers having been taken into account, the First Appellate Court is found to have rightly said that the same is of no assistance to the case of the Plaintiff in proving his possession over the suit property as described in the plaint. The land under sabik plot no.255 covers a large area of Ac.1.050 decimals. So without description of the specific portion in the petition and the eviction order passed by the Endowment Commissioner, the First Appellate Court has rightly arrived at a conclusion that it would not be correct to say that the suit plot forms part of the same which was the subject matter in the eviction proceeding even though that land forming the subject matter of the eviction proceeding, had been carved from the suit plot of plot no.255. In view of the evidence, as obtained, the First Appellate Court is found to have rightly held that the Plaintiff has failed to prove his possession of the suit land at an anterior point of

time than that of the Defendant. Therefore, this Court finds no such reason or justification to take a view to the contrary.

13. Coming to the cross-objection, the judgment passed by the First Appellate Court, specifically dedicated in judging the sustainability of the findings of the Trial Court on those two issues being carefully gone through, no such infirmity is noticed therein for interference.

14. In the result, the Appeal as well as the cross-objection stand dismissed. There shall, however, be no order as to cost.



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