

IN THE HIGH COURT OF ORISSA AT CUTTACK

RSA No.258 of 2008

In the matter of appeal under Section 100 of the Code of Civil Procedure assailing the judgment and decree dated 20.03.2002 passed by the learned District Judge, Puri, in Title Appeal No.30 of 1997 confirming the judgment and decree dated 13.01.1997 and 27.01.1997 respectively passed by the learned Civil Judge, Senior Division, Puri in Title Suit No.101 of 1991.

Doma Behera & Others

....

Appellants

-versus-

***State of Orissa, represented
through the Collector, Puri &
Another***

....

Respondents

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

For Appellants

-

M/s.A.P.Bose, S.K.Mohanty,
D.P. Pattanayak & N. Das
(Advocates)

For Respondents

-

Mr.B.Panigrahi, ASC

CORAM:

MR. JUSTICE D.DASH

Date of Hearing : 05.07.2022 : Date of Judgment:18.07.2022

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 passed by the learned District Judge, Puri, in Title Appeal No.30 of 1997.

By the same, the Appeal filed by these Appellants, being the unsuccessful Plaintiffs, under section 96 of the Code has been dismissed and thereby the judgment and decree dated 13.01.1997 and 27.01.1997 respectively passed by the learned Civil Judge, Senior Division, Puri in Title Suit No.101 of 1991, have been confirmed. These Appellants have thus 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 Trial Court.

3. The Plaintiffs' case is that on 05.04.1939, they came to possess the suit land taking the same on lease from Maulabi Mirja-Tar Begum, who had executed a unregistered patta in their favour. It is stated that since then, they possessed the suit land, planted varieties of trees over there and went on paying the rent. It is their case that during Settlement Operation, not final Parcha and Yadast although were issued in their favour, in the final Record of Right, the land stood recorded in the name of Defendant No.1, i.e, the State. This final Record of Right was published in the year 1966. After that, the Defendant No.2, Tahasildar, Puri Sadar initiated Encroachment Case against the son of Plaintiff No.1 in respect of Ac.0.30 decimals out of the suit land under the provision of Orissa Prevention of Land Encroachment Act, 1972. The Plaintiffs claim that they have been in possession of the suit land as settled rayats of the village under the Ex-intermediary and accordingly, they have acquired right of occupancy over the suit land. Since by taking advantage of the wrong recording of the suit land in favour of the State, the Defendants proposed to lease out the suit land in favour of some

other, the suit has come to be filed when threat of eviction also came through the initiation of the encroachment proceeding.

The Plaintiffs, in the suit, have advanced the following principal prayers:-

“(a) pass a decree declaring the occupancy raiyat over the suit land and acquired valid right over the same;

(b) pass a decree, restraining the Defendants not to evict the plaintiffs from the suit land.”

4. The Defendants, in their written statement, while traversing the plaint averments, have clearly stated that the Ex-intermediary have never leased out the suit land to the Plaintiffs on fixation of rent and had never delivered possession of the suit land to the Plaintiffs. The document projected for the purpose are said to have been antedated, created later and as such forged. It is pleaded that the suit property belong to the State and the Plaintiffs have not acquired any right of occupancy over the same. It is further stated that as per the Record of Right, the suit plot no.222 appertaining khata no.141 extending an area of Ac.5.96 decimals stood recorded as ‘Chhota Jungle’ in the name of the State. From out of that, an area of Ac.2.00 decimals has been settled by the State in favour of one Rabindra Khatai in Revenue Misc. Case No.344 of 1983. But that lease was subsequently cancelled by order in Misc. Case No.344 of 1983. In Encroachment Case bearing no.178 of 1986 land of an area of Ac.1.22 decimals out of the suit land was settled in favour of one Maheswar Sutar and vide Lease Case No.190 of 1993, further land of Ac.0.40 decimals out of the suit land has been settled in favour of that Maheswar Sutar under fraction plot bearing no.222/1136 under hal khata no.136/192. It is asserted that all these settlements are

illegal and without jurisdiction and the State is in possession of the entire land.

5. On the above rival pleadings, the Trial Court has framed as many as five issues. Answering the crucial issue, i.e., issue no.3 with regard to the claim of Plaintiffs that they have the right of occupancy over the suit land; upon examination of evidence and their evaluation, the answer has been recorded against the case/claim of the Plaintiffs. It has also been found in the next issue that the Plaintiffs are not in possession of the suit land.

With such findings, the suit being dismissed; the Plaintiffs having carried the Appeal, have been unsuccessful.

6. The present Appeal has been admitted on 23.03.2012 to answer the following substantial question of law:-

“Whether the courts below have acted contrary to law in not deciding the question of adverse possession as pleaded by the plaintiffs in the plaint to be the basis of their title and claim of declaration of their right, title and interest over the disputed property and permanent injunction”

7. Learned counsel for the Appellants submitted that even declining the Plaintiffs claim that they have acquired the occupancy right over the property in question on the basis of evidence on record in the backdrop of the required pleadings, the Courts below ought to have held that the Plaintiffs have acquired title over the suit land by way of adverse possession having remained in open, peaceful, continuous possession of the same, without any interruption from any quarter for much more than the prescribed period exhibiting all such hostile animus claiming the property to be their own and thereby denying the title of the true owner. He submitted that the findings of the Trial Court that the Plaintiffs are

not in possession of the land is completely contrary to the weight of evidence on record and the Courts below ought to have answered that issue in favour of the Plaintiffs in further saying that the Plaintiffs have been in possession of the same satisfying all the requirement for the establishment of a case of acquisition of title over the suit land by way of adverse possession.

8. Learned counsel for the State submitted that the concurrent findings of the Courts below that the Plaintiffs are not in possession of the suit land are not liable to be interfered in the Second Appeal as no such perversity surfaces therein. It was submitted that when the Courts below, on threadbare discussion of the discussion of evidence on record, have answered the issue of possession of the suit land against the Plaintiffs, even when another view is available to be taken, the same is no ground to unsettle the concurrent finding on fact. He submitted that here in the case even for a moment, it is accepted that the Plaintiffs were in possession of the suit land, no case of acquisition of title over the suit land by way of adverse possession is made out entitling the Plaintiffs with a decree for declaration of the title over the suit land.

9. Keeping in view the above submission, I have carefully read the judgments passed by the Courts below. I have also gone through the pleadings and evidence on record.

10. The claim of the Plaintiff is that they had been given the lease of the suit land by one Maulabi Mirja-Tar Begum and were the tenants under him. It is also stated that in support of the same, an unregistered lease deed had come into being on 5.4.1939. That unregistered deed of lease has, however, not been produced and proved. The explanation on that score is that the said document had been filed before the Settlement

Authorities and it was somewhere misplaced. In support of that, except the bald statement, no other clinching evidence has been let in. Although it is stated that the land was given on lease on receipt of salami of Rs.250/- and a receipt to that effect had been granted to them; the same is neither produced nor proved and on that score, there remains no such explanation. Pleading being not there that Padma Charan Mohanty, being the Manager under the Ex-intermediary was authorized by the intermediary to collect the rent from them, the rent receipts (Ext.2 sereis) have been rightly declined by the Courts below to be given any weightage to. The Trial Court has also noted some other suspicious features surrounding those rent receipts which this Court find to be of quite significant to be taken note of.

The intermediary interest admittedly stood vested the State during the year 1966 and such vesting was free from all incumbrances. The evidence is not there that the Ex-intermediary had issued any rent roll (ekpadia) in favour Plaintiffs. When it is stated that the State Government had accepted rent from the Plaintiffs, the Courts below have rightly found those to be without any basis and authority. The Parcha slip produced by the Plaintiffs does not contain the signature of the Settlement Authority. By assigning good reasons, the yadast record has been disbelieved. With such evidence on record, the Courts below have rightly held that the Plaintiffs have not acquired the occupancy right over the suit land.

11. In the backdrop of above, the question now stands whether the Plaintiffs can be said to have acquired the title over the suit land by way of adverse possession. The land having been vested with the State free from incumbrances during the year 1966, there is no pleading nor evidence that the Plaintiffs, finding the land to be belonging to the State,

occupied the same from a particular date by denying the title of the State in respect of that land. Here when the Plaintiffs do not accept the title of the State in respect of the suit land, their possession even if accepted for a moment for whatever length of time never be said or taken to be in denial of the title of the true owner and thereby it cannot be said that they claiming the same unto themselves, as against the true owner-State, they possessed the same. Since this basic ingredient does not surface in the case, the answer to the substantial question of law stands returned against the claim/case of the Plaintiffs.

For all the aforesaid, the judgments and decrees passed by the Courts below hereby receive the seal approval.

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

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

