

RSA No.361 of 2007

Abhiram Sahoo & Others *Appellants*

Babaji Sahoo & Others *Respondents*

For Appellants - M/s.D.R. Bhokta, H.S. Satapathy,
A.N. Sahoo & B.N. Udgata
Advocates

For Respondents - None

MR. JUSTICE D.DASH

Date of Hearing :12.01.2022 :: Date of Judgment: 21.01.2022

By the said judgment and decree, the First Appellate Court has dismissed the Appeal filed by the

present Appellants under Section 96 of the Code and thereby has dismissed the judgment and decree dated 29.09.2003 and 31.10.2003 respectively passed by the learned Civil Judge (Junior Division), Anandapur in T.S. No.11 of 1999 by which the suit filed by the present Appellant as the Plaintiffs 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 Suit.

3. The Plaintiffs' case is that the suit property measuring Ac.0.01 decimals out of Ac.0.03 decimals under plot no.1665 appertaining to khata no.8 of Mouza-Baharipura is their joint ancestral homestead land which has not been partitioned in metes and bounds. It is stated that the Defendant no.1, who is one of the co-sharers, without the knowledge and consent of other co-sharers exchanged said Ac.0.01 decimals of land by a registered deed of exchange dated 10.07.1995 in favour of Defendant No.3. The Defendant No.3 being armed with such registered deed of exchange, prevented the Plaintiffs to come over the suit plot for which they were deprived of using the road under plot no.1683, the tank under plot no.1680 and their homestead land under plot no.1688. So, they filed the suit for cancellation of that registered deed of exchange dated 10.07.1995 executed

between Defendant No.1 and 3 and for permanent injunction.

4. The Defendant No.3 contested the suit. In his written statement, a specific stand has been taken that there was complete partition of the properties amongst the parties in metes and bounds and as per the said partition, the Defendant No.1, who is none other than the father of Plaintiff Nos.1 to 3, was in exclusive possession of the suit land on allotment of the same in his share. So, for his convenience, he executed the deed of exchange with Defendant No.3 in respect of the suit land and other landed properties. The Defendant No.1 under the said deed of exchange got another portion of land from Defendant No.3 over which there stands no dispute. It is thus stated that the exchange has been fully acted upon and the parties are in possession in respect of the land accordingly.

5. On the above rival pleadings, the Trial Court has framed seven issues. The issue no.5 first as to whether the Plaintiffs have the right of easement of pathway over the suit land, upon examination of evidence and their evaluation, has been answered against the Plaintiffs in very clear terms that the Plaintiffs were not in use of suit land as path way to their other land. It has been said that there was no path way over the said suit plot bearing no.1665. Then coming to issue no.6 with regard

to deed of exchange, the Trial Court has held that Ext.1, that deed of exchange is valid in the eye of law. These answers have practically led to the dismissal of the suit in non-suiting the Plaintiffs.

The Plaintiffs, being unsuccessful in the suit, having carried an Appeal under Section 96 of the code, have also failed.

6. Learned counsel for the Appellants submitted that the finding on that deed of exchange under Ext.1 to be valid as has been recorded by the Courts below is contrary to the facts and circumstances of the case as obtained in evidence let in by the parties. He submitted that the Courts below have fallen in error in holding that for want of consent of the Plaintiffs, this Ext.1 is not invalid. According to him, the Courts below have erred both on fact and law in ruling in favour of that Ext.1

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

8. The deed of exchange (Ext.1) concerns with Ac.0.01 decimal of land from out of Ac.0.03 decimals under plot no.1665 appertaining to khata no.8. It having been found by the Courts below that the properties are joint, the question arises as to whether it was that the

validity of the said exchange is dependent upon the consent of the other co-sharers or not.

It has been admitted by P.W.3, who is Plaintiff No.1 that Ratha, Arjuna Kinei and Bhima were in separate mess. The Defendant No.3 has been examined as D.W.3 and he has stated that there was separation of joint family properties by metes and bounds and the eastern portion measuring Ac.0.01 decimal under plot no.1665 had fallen to the share of Defendant No.1, being the legal heir of Rath.

Admittedly, the Defendant No.1 is the father of the Plaintiffs and as such he is the karta of the family consisting of himself and the Plaintiffs. As would be evident from the registered deed, Ext.1, it is not stated that the land which has been taken by the Defendant No.1 in exchange is not in his possession or that it is still in possession of that Defendant No.3. The Courts below, on due appreciation of evidence on record having found that the parties have acted upon the arrangements as to the exchange as evident from Ext.1, this Court finds no such infirmity therein.

9. With the above state of affair in the evidence, this Court is of the considered view that the submission of the learned counsel for the Appellants (Plaintiffs) that

there surfaces substantial question of law meriting admission of this Appeal has no force.

10. In the result, the Appeal stands dismissed. In the facts and circumstances of the case, no such order as to cost is passed.

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, and Court's Office Order circulated vide Memo Nos.514 and 515 dated 7th January, 2022.

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