

IN THE HIGH COURT OF ORISSA AT CUTTACK

R.S.A. NO.325 OF 2017

In the matter of an appeal under section 100 of the Code of Civil Procedure has assailed the judgment and decree passed by the learned District Judge, Mayurbhanj, Baripada in RFA No.49 of 2003 by confirming the judgment and decree passed by the learned Civil Judge (Senior Division), Baripada in Title Suit No.107 of 2003.

Arjun Behera

:::

Appellant

-versus-

State of Odisha & Another

:::

Respondents

**Appeared in this case by Hybrid Arrangement
(virtual/physical mode)**

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For Appellant

:::

M/s.Niranjana Lenka,
H.K. Mahanta, L. Sahu,
Mrs. R. Lenka, Mrs. N. Lenka,
Advocates.

For Respondents

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Ms. Samapika Mishra,
Addl. Standing Counsel.

CORAM:

MR. JUSTICE D.DASH

DATE OF HEARING::21.06.2022, DATE OF JUDGMENT::04.07.2022

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 passed by the learned District Judge, Mayurbhanj, Baripada in RFA No.49 of 2003.

By the same, the Appeal filed by the present Appellant being the unsuccessful Plaintiff under Section-96 of the Code has been dismissed

and thereby the judgment and decree passed by the learned Civil Judge (Senior Division), Baripada in Title Suit No.107 of 1997 have been confirmed.

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. Plaintiff's case is that on 30.10.1957, the then Governor of Odisha laid the foundation for the Baripada Stadium at Baripada Town in the District of Mayurbhanj. Father of the Plaintiff namely, Anadi Behera was then a very good cook in the area. He supplied food stuff on that occasion. The Governor, other Authorities including the District Magistrate being satisfied with the quality of the food stuff so supplied by Anadi, accepting his request directed the Revenue Officer orally to settle the suit land in his favour and that being so ordered, the father of the Plaintiff constructed a thatched house over the suit land and began to run a hotel. It is stated that land in question was from that time onwards openly possessed by Anadi and it was in a peaceful manner, continuously without any disturbance from any quarter. It is further stated that said possession of the suit land by the Anadi was in denial of the title of the State. The Plaintiff was always with his father in helping him in running the hotel and as such after the death of his father, the

Plaintiff continued to occupy that land and thatched house as before. It is stated that on the basis of a false report of the Revenue Inspector, Encroachment Case No.1229 of 1996 was initiated under the provisions of the Orissa Prevention of Land Encroachment Act (for short the OPLE Act) against the Plaintiff and notice under Section-6(1) was served upon the Plaintiff with a direction to give up the possession of the suit land. The Plaintiff then filed show cause projecting the grant and the case of acquisition of the title over the suit land by way of adverse possession. It is stated that Tahasildar, Baripada without affording opportunity to the Plaintiff to adduce evidence had passed final order of eviction on 29.03.1996.

Plaintiff having filed an Appeal before the Sub-Collector, Baripada, failed. Therefore, the Tahasildar when issued noticed directing the Plaintiff to give up vacant possession of the suit land, the suit came to be filed.

4. The Defendants in the written statement while traversing the plaint averments denied the fact that there was never any decision for granting or for settlement of the suit land in favour of the Plaintiff's father at any given point of time in the year 1950 or so. It is stated that the Plaintiff was preparing food stuff and supplying the same. He as such was attached to the Mayurbhanj Athletic Association, which was in

care and control of the Stadium. For the purpose, the Plaintiff was permitted to utilize a space in the Stadium compound for preparing and supplying food materials and at later point of time; he was permitted to put up a temporary shed for the purpose to overcome the difficulties. It is stated that the Plaintiff despite protest by all concerned, forcibly constructed a pucca room over the suit land causing great inconvenience and hardship to the Association. So, move being made by the Association, the Tahasildar upon due enquiry rightly initiated the proceeding under the OPLE Act for evicting the Plaintiff from the unauthorized occupation of the suit land.

5. The Trial Court on the rival pleadings having framed as many as four issues, has rightly taken up issue no.2, first for decision since that is the crucial one. Upon examination of evidence and their analysis, the Trial Court has concluded that the Plaintiff has failed to establish his claim/case of acquisition of title over the suit land either by way of settlement or by way of adverse possession. This has finally led to the dismissal of the suit.

6. The Plaintiff thus having been non-suited although carried the First Appeal; the same too has been dismissed.

7. Mr. Niranjan Lenka, learned Counsel for the Appellant submitted that the finding of the Trial Court on issue no.2 is contrary to the

overwhelming evidence in favour of the Plaintiff's possession of the suit land fulfilling all the required ingredients for the establishment of the case of acquisition of title of adverse possession. He further submitted that the view taken by the Trial Court that the Plaintiff has not acquired title over the suit by adverse possession is contrary to the settled position of law. It was submitted that the Trial Court, a conclusion that all the ingredients required for the purpose of establishment of case of acquisition of title of immovable property by the Plaintiff by way of adverse possession have not been fulfilled is perverse in as much as the important evidence on record have been purposely overlooked and some extraneous manner have been brought within the arena of consideration which if would have been done correctly, the finding should have been otherwise. He, therefore, submitted for admission of this Appeal to answer the above as the substantial questions of law.

8. Miss Samapika Mishra, learned Additional Standing Counsel in assisting the Court in the matter of admission of this Appeal, in the exercise to find out as to whether there surfaces the substantial questions of law for being answered; contended all in favour of the findings recorded by the Courts below. According to her, concurrent finding of facts are not liable to be disturbed as here absolutely no such perversity in the manner of appreciation of evidence by the Courts below appears.

She submitted that the Court below having culled out the facts and circumstances emerging from the evidence have rightly made those to pass through the tests as laid under the settled position of law holding the field and thus the end result has to sustain.

9. Keeping in view the submissions made and I have carefully read the judgments passed by the Courts below.

Admittedly, the proceeding under the provisions of OPLE Act had been initiated against the Plaintiff for his eviction from the suit land on the ground that he was in unauthorized occupation of the same. The Plaintiff's claim is that he has been possession of the suit land since the time of his father who had been granted with the land by the Authority.

The Trial Court as seen at paragraph-10 of the judgment has made detail analysis of evidence let in by the Plaintiff, who is under obligation to discharge burden of proof in the matter of open possession of the suit land for upward of the period described in a peaceful manner and that too continuously in denying title of the true owner and claiming the same unto himself, which too has been gone through by the First Appellate Court in seisin of the Appeal to judge the sustainability of the said finding.

The Courts below have rightly discarded the evidence of witnesses examined from the side of the Plaintiff by pointing out the

deficiencies in not accepting the case projected that the Governor of the State of Odisha on that occasion of laying of foundation of the Baripada Stadium had so exercised his authority in directing the District authorities to settle the suit land in favour of the father of the Plaintiff. In fact the age of all these witnesses having been taken into account by the Trial Court, it is found to have been rightly said that their evidence on that score of oral order of the Governor or other Authority at the spot is not at all believable and that is also not as per law. Moreover, when some of the witnesses have stated that the father of the Plaintiff occupied suit land after the visit of Governor of Odisha and the programme was over, some witnesses have stated that the father of the Plaintiff was in possession of the same, long prior to that. Thread bare discussion of the evidence on record being made, the issue has been answered against the claim/ case of the Plaintiff.

The First Appellate Court having made independent analysis of evidence at its level and upon their evaluation too has concluded against the case/ claim of the Plaintiff. The evidence on record is not sufficient to show that such possession of the suit land from the time of Anadi and onwards was in denial of the title of the true owner and that during all these period, Anadi as well as the Plaintiff were exhibiting hostile animus that they are the owners of the suit land; and the recorded / true

owner was no more having any such right. The Plaintiff too has not produced any such document in support of his claim of long possession of the suit land.

It is the settled position of law, that mere possession of a piece of immovable property by the possessor for any length of time does not *if so facto* make out a case of acquisition of title over the land by way of adverse possession and he is required to prove through clear, cogent and acceptable evidence in support of the classical requirements i.e. *nec vi, nec clam, nec precario*. The Courts below having made detail analysis of evidence, when have found the same to be not enough to hold that the Plaintiff in fulfilling all those ingredients has remained in possession of the suit land for upward of the period prescribed; this Court does not find the same to be suffering from the vice of perversity. Therefore, this Court is not in a position to accept the submission of the learned Counsel for the Appellant that this Appeal merits admission to answer any such substantial question of law.

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

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