

HIGH COURT OF ORISSA : CUTTACK
RSA NO.521 OF 2005

In the matter of appeal under Section-100 of the Code of Civil Procedure assailing the judgment and decree passed by the learned Additional District Judge (FTC), Baripada in Title Appeal No.24/18 of 2003-02 in confirming the judgment and decree passed by the learned Civil Judge (Senior Division), Udala in Title Suit No.58 of 2000.

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Sarat Chandra Giri

::: Appellant.

-:: VERSUS ::-

Birendra Naik & Others

::: Respondents.

**Advocate(s) who appeared in this case by hybrid arrangement
(virtual/physical) mode.**

For Appellants

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M/s.S.D. Das, Sr. Advocate,
R.L. Pradhan, D., Mohanty,
A.N. Sahu, H.S. Satpathy, N. Bisoi,
M. Panda, D.R. Bhokta, Advocates.

For Respondents

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P R E S E N T :

THE HON'BLE MR. JUSTICE D.DASH

Date of Hearing: 10.02.2022 :: Date of Judgment:14.02.2022

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 Additional District Judge (FTC), Baripada in Title Appeal No.24/18 of 2003-02. By the same, the judgment and decree passed by the learned Civil Judge (Senior Division), Udala in Title Suit No.58 of 2000 have been confirmed.

The Appellant as the Plaintiff having filed the above noted suit has lost before the Trial Court. Thus, he being non-suited had filed the Appeal under section-96 of the Code; the same has also been dismissed. Hence, the present Appeal.

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. Plaintiff's case is that one Basu Kapundia was the original recorded owner of the land described in Schedule-A of the plaint. He died leaving behind his two daughters, namely, Ambumani and Apamani. Plaintiff is the only son of Ambumani, who had also three daughters. It is stated that Ambumani was given in marriage by her father with one Gadadhar. Apamani, the other daughter of Basu Kampundia fell in love with one Maheswar and stayed in his house. It is said that there was no marriage between them as per caste, custom and rites of the parties. Apamani died issueless. The parties are Hindus and being the members of Scheduled Tribe are not governed by the provisions of Hindu Succession Act, 1956 and they are governed by the traditional Hindu law.

Defendant No.1 is the son of Sarbeswar, who happens to be the brother of Maheswar with whom Apamani was staying as husband and

wife. The Defendant No.2 is the wife of Debendra, the brother of Defendant No.1 and son of Sarbeswar. The other Defendant Nos. 3 to 12 are the purchasers of the properties of Apamani from Maheswar under different sale-deeds. It is stated that Defendant No. 13 is the son of the cousin brother of Basu and Defendant No.14 is the son of elder brother of Defendant No.13. These two Defendants had no interest in the property at any time but even then they were creating disturbance in the peaceful possession of the suit land by the Plaintiff. It is also stated that Basu executed one deed of gift on 01.03.1946 in respect of land measuring M.6-13-2 Biswas in favour of Ambumani appertaining to Khata No.95 and for the same, he had obtained permission in Roj Case No.717/1945-46. He has also gifted measuring M.6-13-2 Biswas in favour of Apamani and delivered the possession of the same which is now the suit land. During settlement, the suit was recorded separately in the name of Apamani and the land which Ambumani and Apamani got from their father Basu being their Stridhan property; they enjoyed the same during their lifetime. It is stated that Ambumani and Apamani had limited interest in those properties and they had no such absolute right of alienation over the same. Apamani died in the year, 1988 and Ambumani died in the year, 1989. So, it is asserted that the properties gifted to the Apamani, after her death devolved upon Ambumani, who

possessed the same till her death. The Plaintiff is claiming to be in possession of the suit land on his own right, title and interest. According to the Plaintiff, Maheswar had no right, title and interest over the said land of Apamani and as such, he has illegally sold the land measuring Ac.0.42 decimals better described in Schedule-B of the plaint to Defendant Nos.3 to 4 by registered sale-deed dated 08.01.1991. He has also illegally sold the land measuring Ac.0.66 decimals to Defendant Nos.5 to 7 by registered sale-deed dated 08.01.1991; Ac.0.75 decimals to Defendant Nos. 8 & 9; Ac.0.34 decimals to Defendant Nos.10 and 11; and Ac.0.72 decimals to Defendant No. 12 by three registered sale-deeds. The said purchasers are said to have no right over the properties under said transactions standing in their favour.

It is stated that after death of Apamani, her property devolved upon the plaintiff as the daughter's son of last male owner, Basu and the Defendants having no right, title and interest over the same are unnecessarily creating disturbance.

4. The Defendant Nos. 1 to 9, 12 and 13 filed joint written statement. Defendant Nos. 10 and 11 also filed their joint written statement. The Defendant No.5 had filed the written statement through the guardian ad litem.

It is stated by the Defendant Nos.1 to 9, 12 and 13 that Defendant No.1 was adopted by Apamani and Maheswar and he resided with them all along in their house as their son and he is also continuing to reside in that house as before. It is further stated that the marriage between Apamani and Maheswar had taken place and they had adopted the Defendant No.1, which has been accepted by all concerned which was to the knowledge of all. So, it is said that the Defendant No.1 had got the suit land after the death of Apamani which was gifted to her by her father. They have also claimed that Apamani had the absolute right over the suit land and Ambumani having died prior to Apamani; on Apamani's death, the property remained in possession of Maheswar, the Defendant No.1. Maheswar was acting as the head of the family and he was exercising all the rights of ownership over the property of Apamani. The sales made by Maheswar are said to be with the full knowledge and consent of Defendant No.1 and those sales are said to be for valuable consideration and as such are legally valid. The purchasers are said to be in possession of their respective purchased lands. The Defendants have further asserted that on the death of Apamani, her property did not devolve upon the Plaintiff as the daughter's son of Basu, but devolved upon Defendant No.1 being the adopted son of Apamani. It is also stated that even if the case of adoption is discarded, then also the property

would come to the hands of Maheswar being the husband of Apamani and in no circumstance, the property would devolve upon the heirs the of father of Apamani.

5. The Defendant Nos. 10 and 11 in their statement had asserted with the Maheswar inherited the gifted land of Apamani after the death of Apamani and he has rightly sold the land measuring Ac.0.34 decimals to these Defendants by registered sale-deed dated 22.04.1994 (Schedule-D of the plaint). They claimed to have got the land mutated in their name and as such in possession of the same as its rightful owners.

6. The Defendant No.4 in his written statement has claimed to have the interest over the suit land being the son of elder brother of Defendant No.13, who is the cousin brother of original recorded owner-Basu.

7. With the above rival pleadings, the Trial Court has framed nine (9) issues.

First coming to issue nos.5 & 7 as to the right of Maheswar over the suit land and the validity of the sales made by him as well as the claim of adoption asserted by the Defendant No.1, undertaking strenuous exercise of analyzing the evidence on record, the Trial Court has held that Apamani and Maheswar had married under one of the approved forms. Proceeding next to discuss the evidence on record further on the question of adoption on scrutiny, the claim of Defendant

No.1 has been negated in saying that he was never adopted by Apamani and Maheswar as their son. Having so held, it has finally been said that after the death of Apamani and Maheswa being the rightful owner of the suit land and was in possession of the same and therefore, the sales made by him are valid and binding.

In answering issue no.6 as to the title claimed by Defendant No.3 to 12 by virtue of their purchases from Maheswar, the same has been returned in their favour.

Finally, the Plaintiff had been found to be having no right, title and interest over the suit land. Accordingly, the suit has been dismissed declining to grant any of the reliefs claimed by the Plaintiff.

8. The Plaintiff having been unsuccessful in the suit had carried the First Appeal which has also been dismissed.

9. Mr. S.D. Das, learned Senior Counsel for the Appellant submitted that the findings of the Courts below that there was marriage between Apamani and Maheswar is the outcome of perverse appreciation of evidence on record. He further submitted that the Court's below have erred in law in saying that the property gifted by Basu to Apamani would not devolve upon the heirs of Basu after the death of Apamani. He, therefore, urged for admission of this Appeal for answering the above substantial questions of law.

10. Keeping in view the submission made, I have carefully gone through the judgments passed by the Courts below.

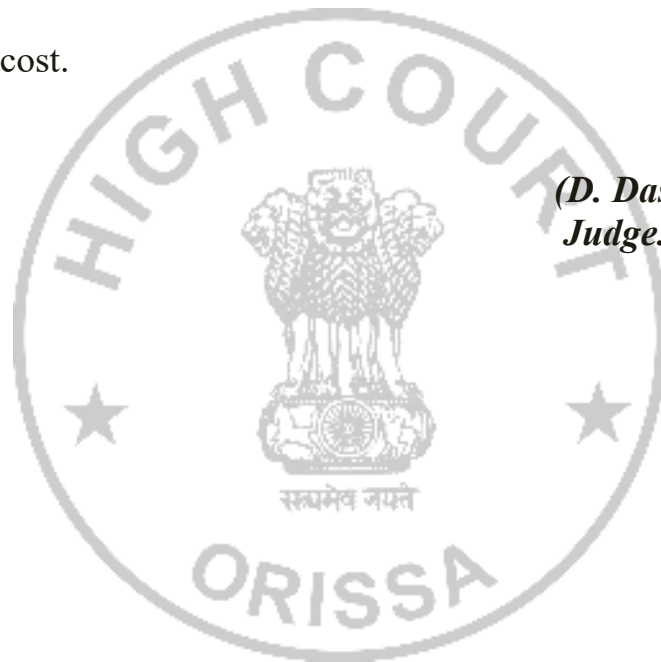
In addressing the submission, it is seen that the Trial Court has first analyzed in great detail, the evidence of D.W. Nos. 5 to 8 in saying that there was marriage between Apamani and Maheswar. The Plaintiff himself having been examined as P.W.1, in his evidence has admitted the factum of marriage between Apamani and Maheswar as to have been performed in presence of Basu. The gift deed also finds mention the status of Apamani as the wife of Maheswar. In all other official documents; Maheswar has been described as the husband of Apamani. In addition thereto, the evidence being there as to long stay of Apamani and Maheswar under one roof; their dealings inter se and the acceptance of the relationship as husband and wife by the society; this Court is not in a position to accept the submission of the learned Senior Counsel for the Appellant that such finding in favour of the marriage between Apamani and their relationship as husband and wife suffers from the vice of perversity when it is not gatherable that the Courts below have either ignored or brushed aside any material evidence in arriving at the conclusion nor have taken any extraneous matter into consideration for the purpose so as to say that had those been correctly taken, the conclusion would have been otherwise. Having said so, the

consequential finding that Maheswar had the right over the property standing gifted to Apamani is thus found to be in order.

For the aforesaid discussion and reasons, the submissions of the learned Senior Counsel for the Appellant are not accepted. This Court therefore, finds that there surfaces no such substantial question of law meriting admission of this Appeal.

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

Narayan



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