

IN THE HIGH COURT OF ORISSA AT CUTTACK

RSA No.60 of 2009

In the matter of an appeal under section 100 of the Code of Civil Procedure assailing the judgment and decree dated 12.11.2008 and 21.11.2008 passed by the Ad hoc Additional District Judge (FTC), Jagatsinghpur, in T.A. No.6/1998 (4/2001) confirming the judgment dated 13.05.1998 passed by the Civil Judge (Junior Division), Kujang in Title Suit No.151/100 of 96-98.

Rama Chandra Mallik (Since Dead) through his L.Rs ***Appellants***

-versus-

State of Orissa and Another ***Respondents***

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

For Appellants - M/s.S.P. Mishra, Sr. Advocate
B.Mohanty, B.S. Panigrahi
S.S. Kashyap and
S.K. Samantaray

For Respondents - D.R. Parida, ASC

CORAM:

MR. JUSTICE D.DASH

Date of Hearing : 15.02.2022 : Date of Judgment:23.02.2022

The Appellant by filing this Appeal under Section 100 Civil Procedure Code (for short, 'the Code'), has assailed the judgment and decree dated 12.11.2008 and 21.11.2008 passed by the Ad hoc Additional District Judge (FTC), Jagatsinghpur, in T.A. No.6/1998 (4/2001).

By the said judgment and decree, while dismissing the Appeal filed by the present Appellant-Plaintiff under Section 96 of the Code, the First Appellate Court has confirmed the judgment and decree

passed by the learned Civil Judge (Junior Division), Kujang in T.S. No. 151/100 of 96-98

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.

The original Plaintiff being dead; his legal representatives coming to be substituted are now pursuing this Appeal

3. The Plaintiff's case, in short, is that he is a member of Scheduled Caste community and a landless person. It is stated that he has been in possession of the suit land since long. The suit land stands recorded in the name of the Defendants-State. As per the case of the Plaintiff, he has constructed a house over the said land on 02.04.1955 and is residing there with his family. It is also stated that on the land lying by the side of the house of the Plaintiff, he has grown different varieties of trees and cultivating a part of it by raising varieties of seasonal crops. He having applied before the State for recording of his land in respect of the suit land stating that he has been in possession of same since long. There was an enquiry to that effect. Accordingly in the remarks column of the record of right, the possession of the Plaintiff has been noted in respect of the said land. On 13.05.1988, a proceeding under the Odisha Prevention of Land Encroachment Act, 1972 vide OPLE Case No.820 of 1989 was initiated against the Plaintiff. He had appeared in the said proceeding. Finally, in terms of the order passed therein, he has paid the penalty for his said occupation. It is stated that he being a member of Scheduled Caste and illiterate, believing the words of the Revenue Inspector and in good faith, has all along remained under the impression that he would become the owner of the land by making the above

payment. He, therefore, filed the suit for declaration of his right and permanent injunction.

The Defendants did not appear in the suit to contest the same.

4. The Trial Court, having gone through the evidence on record and testing the same in the backdrop of the pleadings laid by the Plaintiff in the plaint, has finally dismissed the suit holding the Plaintiff to have not established his case of acquisition of title over the said land by way of adverse possession.

The First Appellate Court being moved under Section 96 of the Code has found no justification or reason to interfere with the said conclusion arrived at by the Trial Court.

5. The Appeal has been admitted on the following substantial question of law:

“Whether the findings of the Courts below that the Plaintiff has failed to establish his case of acquisition of title by way of adverse possession is against the weight of evidence on record and the settled position of law.”

6. Mr. S.P. Mishra, learned Senior Counsel for the Appellant submitted that on the face of the overwhelming evidence with regard to possession of the suit land by the Plaintiff since the year 1955, the Courts below have erred both on facts and law by non-suited the Plaintiff in holding that no case of acquisition of title over the suit land by adverse possession has been made out. He submitted that when all along the Plaintiff's possession over the suit land has remained open, peaceful and continuous and it has been for upward of the period prescribed, the payment of penalty by the Plaintiff in the encroachment case ought not to have been held to have caused interruption/disruption of possession of the suit land when there is no evidence on record to

show that the Plaintiff at any point of time had been physically dispossessed and when he provides an acceptable explanation as to such payment. He, therefore, contended that the substantial question of law has to receive the answer in favour of the Plaintiff entitling him to the reliefs claimed in the suit.

Mr. D. Parida, learned Additional Standing Counsel submitted all in favour of the findings recorded by the Courts below. According to her, even accepting the evidence let in by the Plaintiff in entirety, the basic ingredients required for establishing the case of acquisition of title by adverse possession over the suit land have not been established and therefore the Courts below have rightly dismissed the suit.

7. In order to address the rival submissions in searching out the answer to the substantial question of law, the judgments passed by the Courts below being perused; it is seen that in the year 1989 encroachment proceeding having been initiated against the Plaintiff for which unauthorized occupation of the suit land; he has paid the assessed penalty for his unauthorized occupation for the year 1970-71 to 1989-90. The documents on the score have been proved as Exts.2 and 3. The suit has been filed in the year 1996.

The settled position of law is that for establishment of a claim of acquisition of title over a piece of immovable property by way of adverse possession, the possessor has to establish three classical requirements which are *nec vi, nec clam and nec precario*. The possession thus has to be open, peaceful and continuous for upward of the period prescribed and it has to be in denial of the title of the true owner exhibiting hostile animus all throughout to the knowledge of the true owner and accordingly the possession has to be as that of owner and exercising all the rights over the land in question as such.

8. Coming to the factual settings of the present case, as stated above, the original plaintiff in the encroachment proceedings, having been imposed with the penalty for his unauthorized occupation when has paid the same, the legal impact/ significance stands that he has admitted the title of the true owner over the suit land. Even accepting his possession over the suit land since 1955, the possession thus cannot be said to be in denial of the title of the true owner and rather, his conduct in seeking the settlement of the land is an expression of clear intent in that regard of acknowledgment of the title of the true owner.

Although it is stated that he remained under an impression and in good faith all though that the land, he would become the owner of the same, the same stands as no explanation as that also negates the case of possession as owner denying the title of the true owner exhibiting hostile animus claiming the title unto himself. Remaining under the impression that one would be owner is thus cannot be taken that he was possessing as like owners. With all these, in the absence of any pleading and evidence that by any later conduct, the Plaintiff disowned the title of the true owner and thereafter, continued to possess the suit land denying the title of the true owner and claiming the same unto himself to the knowledge of the true owner for upward of the prescribed period; the answer to the substantial question of law stands rendered against the claim/ case of the plaintiff.

For all the aforesaid discussion and reasons, the ultimate findings of the courts below that the Plaintiff has failed to establish his case of acquisition of title over the suit by way of adverse possession is held not liable to be interfered with. Accordingly, it is said that the Plaintiff has rightly been non-suited being not entitled to the relief(s) claimed in the suit.

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

While parting, it is, however, felt to pertinent to observe that the result of the suit shall not stand on the way of the Defendant to settle on the way of the Defendant to settle the land in suit or any part thereof in favour of the Plaintiffs in case they are found so eligible within the four corners of the policy decision of the Defendants-State and in accordance with law.

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



Basu