

IN THE HIGH COURT OF ORISSA AT CUTTACK

R.S.A. NO.353 OF 2008

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 Additional District Judge, Rayagada, in Title Appeal No.17 of 2003 by dismissing the judgment and decree passed by the learned Civil Judge (Jr. Division), Rayagada in Title Suit No.78 of 1988.

P. Raja Rao & Others

....

Appellants

-versus-

Rudraprasad Sahu & Others

....

Respondents

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

For Appellants - M/s.P.K. Sahoo,
A.C. Mohapatra, A. K. Panda,
Advocates.

For Respondents - M/s.J.R. Dash, S.C. Samal,
S.K. Rath, K.L. Dash,
Advocates.

**CORAM:
MR. JUSTICE D.DASH**

DATE OF HEARING::05.05.2022,DATE OF JUDGMENT::09.05.2022

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, Rayagada, in Title Appeal No.17 of 2003.

By the same, the Appeal filed by the Respondents under Section-96 of the Code has been allowed and a preliminary decree for partition of the property described in Schedule-A of the plaint has been passed

declaring the Respondent No. 1, Respondent No.4 and Respondent No.7's entitled to 1/4th share each; further holding the entitlement of Respondent Nos.5 and 6 as of 1/4th share.

The Respondent Nos. 1 to 3 together as the Plaintiffs had filed the Title Suit No.78 of 1988 in the Court of learned Civil Judge (Junior Division), Rayagada. They had filed the suit seeking a declaration that the sale-deed deed 04.02.1975, Ext.A is void and not binding on them with further prayer for recovery of the possession of the suit land by evicting the Appellants (Defendants) and in the alternative, for partition of the suit land in three equal shares allotting one such share to them. The suit having been dismissed, Respondent Nos. 1 to 3 had filed the Appeal which has been allowed and the suit has been preliminarily decreed as aforesaid by holding the registered sale-deed dated 04.02.1975, Ext. A as void and not binding on the Respondent Nos.1 to 3 (Plaintiffs).

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 the suit land described in Schedule-A of the plaint are the ancestral properties of the Plaintiffs and Defendant No.5. The last owner Kumundan Sahu died in the year, 1969 leaving behind two widows namely, Dalimba (Defendant No.6) and Sukai (Defendant

No.7) and three sons namely, Rudra (Plaintiff No.1), Paramananda (Defendant No.5) and Mukunda (dead). Daughter of Mukunda is Defendant No.8. It is stated that the Plaintiff No.1, after attaining the age of discretion came to know that the suit land are in possession of Defendant No.1 to 4 and being asked, they discussed to have purchased the suit land under registered sale-deed dated 04.02.1975, Ext. A. Obtaining the copy of the said sale-deed, Plaintiff No.1 found that the document is purported to have been executed by Defendant No.5 in favour of Defendant Nos. 1 to 4 showing sale of suit land for a meager consideration of Rs.3,000/- stating therein that the Defendant No.5 is the only surviving heir of Kumundan.

It is stated that Defendant No.5 was an alcohol addicted carrying many such other vices including the hobby in joining the gambling sittings. It is stated that he was never looking after the property and the family and having no such necessity to sale the land which is the joint family property, when he too had also no such authority. It is asserted that the Defendant Nos. 1 to 4 taking advantage of the nature and character of Paramananda managed to obtain the said sale-deed without payment of consideration and as such it is attacked as void and Plaintiff No.1 claims to be of one year of age at the time of death of his father, Kumundan and he attained majority only in the year, 1978. So, he being faced with the disability of minority could not earlier impeach the sale

deed which is absolutely not binding on him. It is stated that the possession of the suit land by the Defendant Nos. 1 to 4 is illegal and the Plaintiffs are entitled to recover the suit land by evicting them. The land under Schedule-B of the plaint is stated to have been acquired by South Eastern Railway and that Schedule-B land which is a part of Schedule – A land for its acquisition having been assessed with the compensation so payable; it is stated that the Defendant Nos. 1 to 4 have no entitlement to it. The Defendant Nos. 1 to 4 have obtained some loans from the State Bank of India, Kashipur by mortgaging the suit land. Initially the suit had been filed by the Plaintiff No.1 and later on the Defendant Nos. 9 and 10 have been transposed as Plaintiff Nos. 2 & 3.

4. The Defendant Nos. 1 to 4 in their written statement have taken the stand that the suit land is not the ancestral property of the Plaintiffs and Defendant No.5 and the same did not belong to Kumundan Sahoo. The suit property had been jointly acquired by Defendant No.5 and Late Mukunda in whose name, the record of right was prepared in the year 1962; when Mukunda was alive. After death of Mukunda, Defendant No.5 sold the suit land to Defendant Nos. 1 to 4 on 15.11.1968 for a consideration of Rs.900/- by executing the sale-deed on a plain paper coupled with delivery of possession. The document being not sufficient for mutation of the land, the Defendant No.5 at the request of the Defendant Nos. 1 to 4 executed registered sale-deed on 03.02.1975 for a

consideration of Rs.3,000/-. It is stated that said consideration was then the prevailing market price of the land involved in the transaction of the land and sold by Defendant No.5 to repay the loan. The Defendant No.6 is the step mother of the Defendant No.5. The Defendant Nos. 1 to 4 then basing on their sale-deed prayed for mutation of the land in which notices were received by the Plaintiff and Defendant Nos. 5 to 7 who did not raise any objection.

It is stated that the Plaintiff No.1 was born in the year 1960 and he became major in the year, 1978. The suit land stands mutated in the name of Defendant Nos. 1 to 4 who on the strength of their purchase having entered into the possession of the same have been in possession as of right exercising all the rights of ownership as such to the knowledge of the Plaintiff and other Defendants. And therefore, it is stated that they have perfected their title by way of adverse possession. The Defendant Nos. 1 to 4 are stated to have mortgaged the suit land with State Bank of India, Kashipur after the record of right stood corrected in their name. It is also stated that a part of the suit land has been acquired in the year 1985 by the South Eastern Railways and then the Plaintiff being major had not raised any objection, so the compensation having been assessed, they too have received the same.

5. On the above rival pleadings, the Trial Court framed in total twelve (12) issues. The trial Court has first of all answered the issue no.3

that the suit lands are the ancestral properties of the Plaintiffs and Defendant Nos. 5 to 8 with which the First Appellate Court as accorded its approval.

When the Defendant Nos. 1 to 4 claim to have purchased the suit land first of all on 05.11.1968 (admitted in evidence and marked as Ext.H) by a plain paper sale-deed for a consideration of Rs.900/- and then to have ratified the same subsequently by registered sale-deed, Ext. A said to have been executed by Defendant No.5 and that involves vast area of land of Ac.31.00, the First Appellate Court has found the sale to be hit by the provision of section-17 of the Indian Registration Act. Thus, having held that by way of Ext.H, no title in respect of those Ac.31.00 of land has been conveyed to the transferees.

When Ext. A on which the Defendant Nos. 1 to 4 rely upon contains the recital with which the Defendant Nos. 1 to 4 are bound that Defendant No.5 became exclusive owner of the suit land on the death of Mukunda dying unmarried and then the evidence on the other hand as well as the pleading of the parties reveal that the Mukunda was survived by his daughter Defendant No.8; it has been held by the First Appellate Court that the Defendant No.5 had no such right over the entire suit land which is ancestral in nature. It has further been held by the First Appellate Court that the ceiling proceeding under the Orissa Land Reforms Act, 1960 (for short, 'the OLR Act') continued from

19.10.1974 till 15.03.1979 and the lands which are the subject matter of the suit were too involved there in the ceiling proceeding and that Ext.A having come into being during pendency of the proceeding under the provision of OLR Act, it has been held that said sale is squarely hit under section-40 of the said Act. So, the claim of the Defendant Nos. 1 to 4 as having title over the suit land on the basis of Ext.H and Ext.A have been held to be wholly untenable. This being the view of the Trial Court, the First Appellate Court has gone to affirm the same. It has next been held that the Defendants have not established their alternative claim / case as to have acquired title over the suit land by adverse possession and this finding having been rendered by the Trial Court against the Plaintiff, the First Appellate Court has negated the same.

6. Heard learned Counsel for the Appellants in the matter of admission of this Appeal. Learned Counsel appearing for the Respondent Nos. 1 to 3 assisting this Court in that matter has also advanced his submission in saying that no such substantial questions of law arise for being answered in this Appeal.

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

8. The concurrent finding of the Courts below that the Defendant Nos. 1 to 4 to have not derived any title on the strength of Ext.H and

Ext.A are backed by all such legal reasons as aforesaid and accordingly, are found to be unassailable.

Coming to the question of the stand taken by the Defendant Nos. 1 to 4 to have acquired title over the suit land by adverse possession having possessed from 15.11.1968, the Trial Court as it appears simply taking a view that the suit had been filed after expiry of 12 years therefrom having adversely viewed the case of the Plaintiffs when had declined them to be granted with the reliefs in saying that their right, title and interest over the suit have stood extinguished by virtue of operation of the provisions of section-27 of the Indian Limitation Act, 1963; the First Appellate Court has rightly negated the same in taking a view that the suit is for recovery of possession based on title claimed by the Plaintiff; it is for the Defendant Nos. 1 to 4 to plead and prove the three classical requirements which are: *nec vi, nec clam, nec precario*, by leading, clear, cogent and acceptable evidence. It has taken right view that mere possession of the property more than twelve years would not amount to acquisition of title over the land by way of adverse possession so as to be held as title holder as such by acquiring that right unless the possessor shows that he came into possession of the property of a particular date, the nature of his possession was as that of owner in exercise of all such right as such and in denial of the title of the true owners, to their knowledge and all those continued for upward of the

period as prescribed althrough remaining open and undisturbed. The First Appellate Court has then gone to consider at paragraph-11 of the judgment, to discuss the evidence as to the status and positioning of the parties. When Ext.A has come into being, the Defendant Nos. 1 to 3 were minors and they purchased the properties through their mother guardian. Defendant No.5 claim to have become the owner of the property from that day. So, it has been said that the Defendant Nos. 1 to 4 cannot be said to have entered into possession of the suit land as adverse to the true owner. Again looking at the recital of the document, Ext.A and finding out the age of the Defendant No.3 as mentioned therein, the First Appellate Court appears to have rightly said that it has neither been shown as to when Defendant No.1 to 3 have attained majority and when they independently asserted their right and came to possess the land in the suit. Further evidence on record being discussed, this Court finds no such infirmity with the last finding of the First Appellate Court that the Defendant Nos. 1 to 4 have not established their case of perfection of the title over the suit land by way of adverse possession.

9. Having said so, when the sale-deed Ext.A has been held to be void and the Defendant Nos. 1 to 4 having been held as not entitled to the property that they claim to have purchased and possessed, this Court finds absolutely no such reason/ justification to take a different view as

much less to point out any infirmity therein. For the aforesaid, the submission of the learned Counsel for the Appellants that the substantial questions of law as find mentioned at page-6 of the Memorandum of Appeal so arise in this case for being answered meriting admission of this Appeal cannot be countenanced with.

10. In the result, the Appeal stands dismissed. However; there shall be no order as to cost.

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

Narayan

