

HIGH COURT OF ORISSA : CUTTACK
RSA NO.482 OF 2013

In the matter of appeal under Section-100 of the Code of Civil Procedure, challenging the judgment and decree passed by the learned Second Additional District Judge, Cuttack, in RFA No.49 of 2011 in dismissing the judgment and decree passed by the learned Civil Judge (Junior Division) 1st Court, Cuttack in Civil Suit No.84 of 1998.

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Raghunath Jew Thakur Bije, Tulsipur :::: Appellant.

-:: VERSUS ::-

Bijaya Kumar Samantaray & Others :::: Respondents.

Advocate(s) who appeared in this case by Video Conferencing mode.

For Appellant	...	M/s.A.C. Mohapatra, A.K. Panda, S.N. Upadhaya, Advocates.
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For Respondents	...	-----
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P R E S E N T :

THE HON'BLE MR. JUSTICE D.DASH

Date of Hearing: 18.02.2022 :: Date of Judgment:23.02.2022

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 Second Additional District Judge, Cuttack, in RFA No.49 of 2011. By the same, the Appeal filed by the present Appellant under section-96 of the Code has been dismissed and the judgment and decree passed by the learned Civil Judge (Junior Division) 1st Court, Cuttack in Civil Suit

No.84 of 1998 have been confirmed. The Appellant as the Plaintiff having filed the suit has thus, been non-suited, when his suit has been dismissed in entirety.

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 it being a religious trust had an employee named Golekh Chendra Lenka. It is alleged that he being in collusion with some persons had created certain documents in their favour. One of the beneficiaries of said created documents is the father of Defendant No.1, who happens to be the husband of Defendant No.2. It is stated that he tried to encroach the suit property some time in past when late Damodar Ramanuja Das was the Mahanta. Subsequently, the matter stood settled due intervention of local gentlemen. The Plaintiff continued to possess the suit land. Damodar Ramanuja Das died in the year, 1971 and the present Mahanta who was then a minor came to take over at that time. Therefore, another person was entrusted to keep watch over the property of the Plaintiff.

It is next alleged that the father of Defendant No.1 and husband of Defendant No.2 has managed to obtain the record of right in respect of suit land in his favour by gaining over by the Settlement Authorities. The Plaintiff has filed Settlement revision vide R.P. Case No.2129 of 1988 for correction of the said record of right after the death of the father of the Defendant No.1. The Defendant No.1 having no manner of right, title and interest again

tried to make an attempt to dispossess the Plaintiff by selling the said land.

It is next also that the Ex-Mahanta, Damodar Ramanuja Das had entrusted one Raghunath Swain to keep watch and look after the said property along with other properties of the Plaintiff, and after his death, the Defendant Nos. 2 to 6 were permitted to stay in the house standing over the suit land. It is stated that now all the Defendants have joined hands with the sole motto to dispossess the Plaintiff from the suit land.

4. The Defendant Nos.1 and 2 while traversing the plaint averments have given emphasis upon the fact that the father of Defendant No.1 and husband of the Defendant no.2 had purchased the property in question in the year 1960 by registered sale-deed dated 12.08.1960 and his vendor had purchased the same by registered sale-deed dated 14.12.1953. It is further stated that the suit land stood vested with the State Government in the year 1973-74 in Vesting Case No.657 of 1974 and for that rent schedule was prepared/issued in the name of the ancestors of the Defendants. The rent being assessed is being paid all along. It is also their case that in the said Vesting Case concerning the suit land, all concerned were duly noticed and the ancestors of the Defendants having got the land demarcated are possessing the same. It is further stated that for the same piece of land previously Title Suit No.159 of 1966 had been filed and that having been dismissed for default on 24.11.1978, no further step has been taken.

5. The Defendant Nos. 3 to 5 stated that they have been possessing the suit land over which the residential house stands which has also been renovated and they have taken electric connection to the said house and thus are in continuous-occupation possession of the same.

6. The Trial Court on the above rival pleadings having framed seven issues, has rightly taken up first issue no.3 for decision as that concerns with the foundation of the claim of the Plaintiff as to their right, title, interest and possession over the suit land. Mainly, going through the documentary evidence further keeping in view the provisions of law holding the field, the Trial Court has recorded the answer against the Plaintiff in saying that the Plaintiff has no title and possession over the suit land. It has also been found by the Trial Court that the Defendants are in possession over the suit land. Having said as above and then going to answer the other issues against the Plaintiff, the suit has been dismissed.

The First Appellate court judging the sustainability of said answer recorded by the Trial Court in respect of issue no.3; at paragraph-8 of its judgment has finally arrived at the same conclusion as that of the Trial Court that the plaintiff right, title, interest and possession of the suit land do not rest with the Plaintiff.

7. Learned Counsel for the Appellant submitted that for answering issue no.3, the Courts below have given emphasis upon the order of settlement Ext.-C-1. He submitted that the Courts below have erred in saying that such an order of settlement being under the relevant provisions of the OEA Act is not subject to scrutiny in the

suit by the Civil Court in view of the bar contained under section-39 of the OEA Act. It was submitted that the Courts below are not justified in saying that by virtue of the order of vesting of the suit land with the State free from all encumbrances and subsequent order of settlement, the Plaintiff's right whatsoever in so far as said property is concerned has been extinguished and that is not at all correct when the order of vesting Ext.C-1, is void abintio. He, therefore, urged for admission of the Appeal to answer the above substantial questions of law.

8. Keeping in view the submissions made, I have read the judgments passed by the Courts below.

9. Admittedly, the Plaintiff was the erstwhile possessor of the suit land. On 24.12.1953, one sale-deed has been executed in favour of one Debendralal Ghosh and he in turn has sold the same to Defendant No.1 by registered sale-deed dated 12.08.1960.

10. The estate held by the Plaintiff's-Trust stood vested with the State Government by Gazette Notification dated 18.03.1974 (Ext.Q-1). The Plaintiff –Deity has challenged the same but the fact stands that the vesting was complete in every respect and absolute. The properties thus vested with the State free from all encumbrances. It reveals from Ext.C-1 that the father of the Defendant No.1 had applied before the Tahasildar for settlement of the suit land which was in his possession; and order has been passed by the Competent Authority to that effect in OEA Case No.657 of 1974 on 07.04.1979. The suit land has been settled in the name of father of the Defendant No.1. There was no objection to that effect from any quarter and it

has also not been assailed thereafter in appropriate forum in accordance with the provisions of said Act and Rules.

In that view of the matter, the bar contained under section-39 of the OEA Act being taken into account when the Plaintiff has not established that the Competent Authority in passing such an order of settlement has thrown the provisions of Act and Rules to the winds and grossly violating the principle of natural justice has passed the order, this Court is led to say that the Courts below have rightly recorded the answer on issue no.3 against the case/ claim of the Plaintiff. This Court therefore, finds that no such substantial question of law surfaces in the case for being answered meriting the admission of the Appeal. The submission of the learned Counsel for the Appellant thus fails.

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

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

Narayan