

IN THE HIGH COURT OF ORISSA AT CUTTACK

R.S.A. No.7 of 2013

In the matter of appeal under Section 100 of the Code of Civil Procedure assailing the judgment dated 31.08.2012 passed by the learned Civil Judge, Senior Division, Kodala in R.F.A. No.14 of 2009 confirming the judgment and decree dated 26.10.2006 and 08.11.2006 respectively passed by the learned Civil Judge, Junior Division, Kodala in T.S. No.17 of 1998.

Saubhagini Swain & Others* *Appellants

-versus-

Smt. Mahalaxmi Sahu & Others* *Respondents

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

***For Appellants* - Mr.A.P. Bose**
***For Respondents* - (Advocate)**

CORAM:

JUSTICE D.DASH

Date of Hearing :24.11.2022 : Date of Judgment:25.11.2022

D.Dash,J. The Appellants, in 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 Civil Judge, Senior Division, Kodala in R.F.A. No.14 of 2009.

By the same, the Appeal filed by the predecessor-in-interest of these Appellants, as the unsuccessful Plaintiff, under section 96 of Code, challenging the judgment and decree dated 26.10.2006 and 08.11.2006 respectively passed by the learned Civil Judge, Junior Division, Kodala in T.S. No.17 of 1998, has been dismissed.

It be stated here that the predecessor-in-interest of the present Appellants, being non-suited by the Trial Court, which had refused to pass any order as to declaration of his right, title and interest over the suit land and the prayer for injunction, he had filed the First Appeal.

During the First Appeal, the Appellant therein (Original Plaintiff), having died, these Appellants, being substituted, as his legal heirs, pursued the Appeal, which too has been dismissed. That is how now they have filed this Second 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. The Plaintiff's case is that he had purchased Ac.0.65 cents of land relating to Patta No.E.C.5 of 78 and Sabik Survey No.10 from one Punia Gouda and his sons under registered sale deed No.555/79 for a consideration of Rs.2000/- and possessed the same as its lawful owner.

The Plaintiff, then in the year 1984, has sold Ac.0.463 from western side to ten persons by executing registered sale deeds at different point of time. He thus had with him the residue land of Ac.0.187 decimals from the eastern side which so remained. It is said that the Settlement Authorities have erroneously recorded the suit land in the name of one Golak Bihari Swain and Mahadei Gouda while keeping Ac.0.102 decimals of land under Hal Khata No.192 assigned with Plot No.99 in Government Khata as "Abadya Jogya Anabadi". It is further stated that the same appertains to Sabik Plot No.10 and he had no connection with Sabik Plot No.9 Village-

Khairapalli,. Golakh Bihari Swain, without having possession and enjoyment, is said to have obtained nominal Patta under E.C. No.6/78 for an area of Ac.0.04 cent corresponding to Sabik Plot Nos.9 & 10. This land was said to be totally different from the land of the Plaintiff. The Settlement Authorities recorded the lands in the name of Golak Bihari and Mahadei corresponding to Plot No.10 just to the eastern side plot of Panchu Gouda.

It is further stated that Defendants 1 and 2, without knowing anything and paying any consideration, had fraudulently managed to obtain the registered sale deeds in their names from Golak Bihari only to grab the land of the Plaintiff taking advantage of the fact that he was residing at a distant place. When the Defendants 1 and 2 filed Mutation Case Nos.2429 & 2430 of 1995 before the Tahasildar, Kodala to mutate the land in their favour, the Plaintiff filed objection through his Special Power of Attorney Holder. However, Tahasildar, Kodala, ignoring the objection of the Plaintiff and without verifying the sabik and hal plot number, has settled the same in favour of the Defendants. The Plaintiff is an educated person and he, through his Power of Attorney Holder, was/is in exclusive possession and enjoyment of the suit land.

It is further stated that the Defendants have no right, title, interest and possession over the suit land. Similarly, the settlement of the land in favour of Golak Bihari, a man of Cuttack is fake. According to the Plaintiff, the land under Hal Plot No.1914 assigned with Khata No.26 comprising of an area of Ac.0.050 decimals; Hal Khata No.95 comprising of Plot No.1913 is to an area of Ac.0.035 decimals Hal Khata No.192 under Plot No.99 comprising of an area

of Ac.0.102 decimals, relate to only Sabik Plot No.10. It is stated that the Plaintiff is the exclusive owner of the suit land.

4. The Defendants 1 and 2, in their written statement, while traversing the plaint averments, have stated that the Plaintiff has never purchased the suit land and was/is not in possession and enjoyment of the same. It is stated that the sale deed filed by the Plaintiff does not cover the suit land and as such, has no concerned with the same. It has been specifically pleaded that Gobinda Swain had got a Plot vide E.C. Case No.6/78 vide Plot Nos.9 & 10 comprising an area Ac0.04 cents for house sites and after arranging the money, he had constructed a thatched house over the suit land and stayed there. In the year 1991 during the last Settlement Operation, the thatched house was completely destroyed for which the same was recorded as 'Padar' land by the Settlement Authorities vide Hal Khata No.26 appertaining to Plot No.1914 to an extent of Ac.0.05 cents in the name of Golak Bihari. In the same year, the Defendants purchased the suit lands by two separate sale deeds after duly verifying all the documents and after the property was duly identified. The Defendant No.1 purchased Ac.0.01 cent from Golak Bihari by registered sale deed, which was assigned with Sabik Khata No.6/78, Sabik Plot Nos.9 & 10. It is also stated that Defendant No.2 purchased Ac.0.03 cents by registered sale deed No.1997/91. Since the date of purchase, they are claiming to be in physical possession of the suit land by using it as thrashing floor. It is also stated that they are the bona fide purchaser for value and as such in physical possession of the same.

5. The Trial Court, faced with the above rival pleadings, has framed nine issues in all. Upon examination of the evidence and their evaluation, answers to those have been returned against the Plaintiffs. It has held the finding that the Plaintiff has failed to prove to be having the right, title, interest and possession over the entire suit land and he is not in physical possession of the same.

For the above, the suit filed by the Plaintiff has been dismissed and it has been held that the Plaintiff is not entitled to obtain a decree of declaration of his right, title, interest and possession over the suit land and consequently, the permanent injunction and correction of village map appertain to Plot No.10. The First Appellate Court, being moved by the unsuccessful Plaintiff, has confirmed all those and finally, dismissed the Appeal.

6. Learned counsel for the Appellant submitted that the Courts below are not right in returning the finding that the Plaintiff has failed to establish the case that he has the right, title and interest over the suit land described in Schedule-A of the plaint although the same is his residue land after all sales made by him and such a finding, according to him, suffers from the vice of perversity. He next contended that even though the finding is concurrent that too on factual settings of the case, the same warrants interference in the Second Appeal.

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

8. Admittedly, the Plaintiff had purchased the land by registered sale deed (Ext.1) of the year 1979. Out of said purchased land, he has sold land measuring Ac.0.463 decimals of land to

different persons and it is said that the original area of Ac.0.187 decimals of land was with him. The suit has been filed in respect of that extent of land, as according to the Plaintiff, the Settlement Authorities have wrongly recorded the suit land in the name of Defendants 1 and 3 and kept land to the extent Ac.0.102 decimals in Government Khata. The Courts below, on scrutiny of evidence on record, in the backdrop of the rival pleadings, have arrived at a conclusion that the Plaintiff, in the suit, has not specifically given the description of the land in as much as when it is said that the entire land corresponds to Sabik Plot No.10, the area of Sabik Plot No.10 has not been indicated. The Plaintiff has also not filed the required information-sheet although the suit land has been described given the Major Settlement particulars. So, the Courts below have found it difficult to ascertain whether the land under E.C. Patta No.5/78 corresponds to Hal Sabik Patta Nos.26, 95 & 192. The Plaintiff has not proved the relay map by proving the sabik map and hal map.

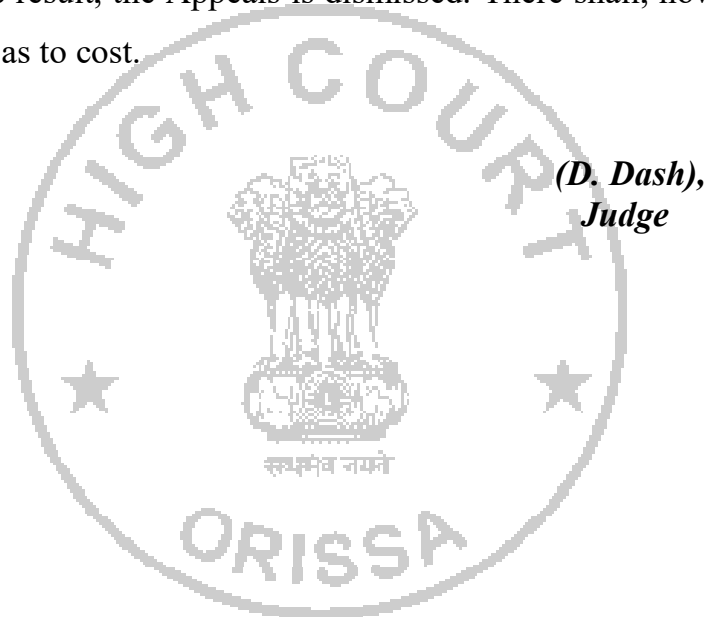
In such state of affairs, the Courts below, having said that the Plaintiff has failed to establish that Sabik Plot No.78 corresponds to Hal Plot No.1914, 1913 and 99, this Court finds that no such error has been committed in refusing the Plaintiff to grant the relief of declaration of right, title, interest and possession over the entire suit land.

With the available evidence on record, as discussed by the Courts below, the concurrent finding rendered, on the factual settings of the case, as laid by the Plaintiff in holding that the Plaintiff has failed to establish his claim over the suit land, as

described in Schedule-A of the plaint, is thus found to be not suffering from the vice of perversity.

The Courts below have discussed the entire evidence placed on record in their proper perspective and thus having arrived at the right conclusion leading to dismissal of the suit, this Court is unable to accept the submission of the learned counsel for the Appellant that there arises any such substantial question of law for being answered in this Appeal, meriting its admission.

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



Basu