

IN THE HIGH COURT OF ORISSA AT CUTTACK

RSA No.288 of 2012

In the matter of an appeal under section 100 of the Code of Civil Procedure assailing the judgment and decree dated 16.03.2012 and 27.03.2012 respectively passed by the learned Civil Judge, Senior Division, Rairangpur in R.F.A. No.4 of 2007 setting aside the judgment and decree dated 11.05.2007 passed by the learned Civil Judge, Junior Division, Rairangpur in Civil Suit No.3 of 2004.

Balaram Mohanta

....

Appellant

-versus-

Bina Si & Others

....

Respondents

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

For Appellant - Mr.Manas Ranjan Dash,
B.C. Panda, S.K. Mohanty,
B. Sahoo, N. Mohanty and
S.N. Biswal
(Advocates)

For Respondents -

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

Date of Hearing & Judgment :18.04.2022

The Appellant, by filing this Appeal under Section 100 of the Code of Civil Procedure (for short, 'the Code'), has assailed the judgment and decree dated 16.03.2012 and 27.03.2012 respectively passed by the learned Civil Judge, Senior Division, Rairangpur in R.F.A. No.4 of 2007.

By the same, the learned Civil Judge, Senior Division, Rairangpur has allowed the Appeal filed by the Respondents (Defendants) whereby the suit filed by this Appellant as the Plaintiff numbered as Civil Suit No.3 of 2004, which had been decreed by the Trial Court, has been dismissed. The Appellant (Plaintiff) has thus been non-suited.

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. The Plaintiff's case is that one Madhab Si was the owner of Ac.0.39 decimals of land under Sabik Khata No.96 of Village-Sigdi. In order to repay the loan, he sold the said land to the Plaintiff by registered sale deed dated 16.06.1968 for a consideration of Rs.950/- followed by delivery of possession. Said purchased land of the Plaintiff described in Schedule-A of the plaint is said to be corresponding to different as per the humbers assigned in the record published in the Hal Settlement better described in Schedule-B, which has been the subject matter of the present suit.

It is stated that in the Hal Settlement, the suit land has been recorded in the name of Defendants 6 and 7, the two sons of Madhab, the erstwhile owner. The Plaintiff claims to be in possession of the suit land as its owner since the time of his purchase. The Defendants 1 to 5, being the strangers, are said to have trespassed over the suit land on 05.12.2003 for which the Plaintiff has filed the suit.

4. The Defendants 1 to 7, in their written statement, have contended that they are the descendants of the common ancestor. It is stated that in the settlement, although only Ac.0.35 decimals of land was recorded in the name of Madhab, it was their joint family properties. It is their case

that Madhab had mortgaged Ac.0.35 decimals of land in favour of the Plaintiff and it was an usufructuary mortgage. In the absence of any money lending license being held by the Plaintiff, as an alternative measure to obtain the money, Madhab executed a sale deed, but it was not intended to be given effect to as such. It is further stated that the Plaintiff, being the mortgagee under that usufructuary mortgage was in possession of the said land. In the year 1990, when the Defendants expressed their desire to refund the money, the Plaintiff declined to accept the same. When the matter stood thus, in the year 1991, due to the intervention of the village gentlemen, the Plaintiff accepted the mortgage money and delivered back the possession of the suit land to the Defendants. The Defendants claimed to be in possession of the suit land since that time onwards as the owners.

5. The Trial Court, on the above rival pleadings, having framed seven issues, upon examination of evidence and their evaluation, has answered the crucial issues as to the Plaintiff's title over the suit land by virtue of the registered sale deed of the year 1968 and the consequential issue addressing the defence that whether the Plaintiff, being in possession of the suit land as its mortgagee under the usufructuary mortgage having enjoyed the same till the year 1989, whether on redelivery, the possession of the suit land has come to the hands of the Defendants; the answers have been recorded in favour of the Plaintiff. With such finding, the Trial Court having held that the Plaintiff to have been in possession of the suit land as its owner, declared his right, title, interest and possession over the same measuring Ac.0.35 decimals recorded under plot no.459.

6. The Defendants, having suffered from the judgment and decree passed by the Trial Court, preferred an Appeal under Section 96 of the Code, and they have been successful in that move.

The conclusion arrived at by the First Appellate Court in non-suiting the Plaintiff is that the Plaintiff has failed to prove that his purchased land is the land as shown in Schedule-B of the plaint as per the description finding mention in the Hal Settlement records. On discussion of evidence, having thus said that the Plaintiff has failed to prove his right, title and interest over the suit land, the result of the Appeal has been declared in favour of the Defendants.

7. Learned counsel for the Appellant submits that the First Appellate Court is not correct in answering that the Plaintiff has failed to established his right, title and interest over the suit land as per the description given in the Hal Settlement records. It is submitted that said finding is completely against the evidence on record. According to him, when the Trial Court, after vivid discussion of the evidence on record, had found the Plaintiff to be the original owner in possession of the suit land on the strength of his purchase from Madhab, the same without any reason has been erroneously annulled. He, therefore, urges for admission of this Appeal to answer all those as the substantial question of law.

8. Keeping in view the submissions made, I have carefully read the judgments passed by the Courts below. I have also gone through the plaint and written statement as well as depositions of the witnesses examined during trial as placed by the learned counsel for the Appellant.

9. The Trial Court had decreed the suit declaring the Plaintiff's right, title, interest and possession over Ac.0.35 decimals of land as to

have purchased the same from Madhab. It is the case of the Plaintiff that the suit land which he had purchased corresponds to the land under Hal Plot No.459. The Plaintiff has not filed the Sabik ROR nor the same has been filed the Defendant. The Plaintiff's purchase under Ext.1 being to the extent of Ac.0.354 decimals; the claim here is on the suit land extending to Ac.0.39 decimals. Fact remains that the total extent of land under Hal Plot Nos.459 & 460 comes to Ac.0.39 decimals whereas extent of land under Sabik Plot No.232 was Ac.0.35 decimals. From the plot index (Ext.3) proved by the Plaintiff; it is seen that Hal Plot Nos.459 & 460 have come from said Sabik Plot but their its extent stands at Ac.0.39 decimals with an increase of Ac.0.04 decimals. Therefore, the First Appellate Court is correct in saying that the entire area of the Sabik Plot No.233 cannot be taken to be the same as the area of land under Hal Plot Nos.459 & 460. The plot index further suggests that a portion of Sabik Plot No.233 is there in Hal Plot No.459 and the rest portion of some other Sabik Plot has come into that. Therefore, the conclusion of the First Appellate Court that the entire Ac.0.35 decimals of Hal Plot No.459 does not correspond to the Sabik Plot No.233 is not found fault with. In that view of the matter and in the absence of any further evidence with regard to the description of the purchased land of the Plaintiff as per the records of Hal Settlement by placing the maps etc. or leading evidence through any survey knowing person; this Court finds that the view taken by the First Appellate Court that the Trial Court was not right in finding that the purchased land of the Plaintiff correspond to the entire land under Hal Plot No.459 is not liable to be interfered with. In such state of affairs in the pleadings as also in the evidence; the First Appellate Court is found to have rightly non-suited

the Plaintiff in dismissing the suit in the form it has been laid and for the reliefs claimed.

In the wake of aforesaid, this Court is not in a position to accept the submission of the learned counsel for the Appellant that there surfaces any substantial question of law for being answered in this Appeal meriting its admission.

10. In the result, the Appeal stands allowed with costs throughout.



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