

IN THE HIGH COURT OF ORISSA AT CUTTACK

SAO No.1 Of 2022
(Through video conferencing mode)

Kanhu Padhan @ Pradhan @ ... Appellants
Kanhu Charan Pradhan and others

Mr. G.Mishra, Senior Advocate

-versus-

Pitambara Padhan @ Pradhan ... Respondent

CORAM: JUSTICE ARINDAM SINHA

ORDER
25.01.2022

Order No.

- 01.** 1. Mr. Mishra, learned senior advocate appears on behalf of appellants and submits, the order of remand made by the First Appellate Court should be set aside in appeal. For the purpose, the appeal be admitted on the substantial question of law involved, inasmuch as, when the first appellate Court found that it had no reason to differ with conclusion part only in judgment of the trial Court to deny relief as against issue no.6, remand on issue no.7 could not have been directed.
2. It appears, plaintiffs filed for declaration and injunction in respect of suit property. Issue nos.6 and 7 as appearing in judgment of the trial Court are extracted and reproduced below:-

“ 6. Whether the plaintiff has right, title, interest and possession over the suit land ?

7. Whether the plaintiff is entitled to an order of permanent injunction against the defendants in respect of the suit land ?”

3. Mr. Mishra's contention is that when issue no.6 has been concurrently answered against plaintiff, there cannot be any relief granted to plaintiff on issue no.7. Where plaintiff has been found not having right, title, interest or possession over the suit land, there is no question of entitlement to order of permanent injunction.

4. Court has perused the judgments. The trial Court decided for the suit to be dismissed on issue nos.6 and 7. It was found defendants had adverse possession claiming on basis of exhibit-‘A’, an unregistered sale document dated 29th September, 1960. They had tendered the document as an ancient document and accordingly the trial Court found in favour of defendants, to have perfected their title by adverse possession.

5. The first appellate Court found that exhibit-‘A’ was an unregistered document. It relied on section 17 in Registration Act, 1908, to hold that a document of sale of immoveable property valued at more than Rs.100/- was compulsorily registerable. A compulsorily registerable document, not registered, could not be relied upon in evidence. It also appears from judgment of the first appellate Court that necessary pleading for a finding on adverse possession, was not there in the written statement. As such, finding on adverse possession was

clearly wrong. Adverse possession can be claimed only on evidence adduced of possession, openly and hostile to the real owner. There cannot be finding on adverse possession, when the claim is based on a document, inadmissible in evidence.

6. Direction for remand was given in paragraph 14 of first appellate Court's judgment. Said paragraph is reproduced below :-

“ In view of the discussion made in foregoing paragraphs, the finding of the learned trial court in respect of the issue No.7 having been not properly adjudicated is set aside to remand the case to the trial court with a direction that the learned trial court to give opportunity to both parties to adduce further evidence over the issue No.7 only and heard parties to pass a fresh judgment on the above issue. The parties are directed to appear on 11.12.2021 before the learned trial court. The learned trial court is further directed to dispose of the matter within three months from receipt of the copy of the judgment/TCR as the case may be. In the result, the Civil Appeal is partly allowed as per the above directions. Send the LCR forthwith.”

7. Appellants' contention is that once the first appellate Court agreed with conclusion of the trial Court on issue no.6, there could not have been remand directed on issue no.7, this Court finds that the trial Court in first paragraph of its judgment said. The plaintiff has filed the suit for declaration of his right, title, interest and possession as well as permanent injunction against the defendant in respect of the suit land.

Nowhere in the trial Court's judgment is there a finding or answer separately on issue no.6. The trial Court discussed plaintiff's reliance on rent receipts, defendants' reliance on exhibit 'A' and finding in the consolidation proceeding that defendants were in possession of suit property, to hold that defendants had perfected their title by adverse possession. In the circumstances no substantial question of law arises on contention of appellants, for admission of the appeal.

8. The appeal is dismissed.

(Arindam Sinha)
Judge

Prasant

