

HIGH COURT OF ORISSA : CUTTACK

In the matter of appeal under Section-100 of the Code of Civil Procedure assailing the judgment and decree passed by the learned Additional District Judge, Rairangpur in RFA No.21 of 2006 in confirming the judgment and decree passed by the learned Civil Judge (Senior Division), Rairangpur in Title Suit No.13 of 2002.

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Nirupama Patra & Others ::: Appellants.

-:: VERSUS ::-

State of Odisha Respondent.

Advocate(s) who appeared in this case by hybrid arrangement (virtual/physical) mode.

For Appellants ... M/s.J.N. Rath, S.K. Jethy,
B. Barik S.K. Mishra,
Advocates.

For Respondent ... Miss Samapika Mishra,
Addl. Standing Counsel.

PRESENT:

THE HON'BLE MR. JUSTICE D.DASH

Date of Hearing: 10.02.2022 :: Date of Judgment:14.02.2022

D.Dash,J. 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, Rairangpur in RFA No.21 of 2006. By the same, the First Appellate Court having dismissed the Appeal has confirmed the judgment and

decree passed by the learned Civil Judge (Senior Division), Rairangpur in Title Suit No.13 of 2002.

One Bisambar Patra as the Plaintiff had filed the suit i.e. Title Suit No.13 of 2002 arraigning the State of Odisha as the Defendant for declaration of his title, confirmation of possession and permanent injunction. The suit having been dismissed; he had filed the Appeal under section-96 of the Code. During pendency of the said Appeal, the Appellant (Plaintiff) therein having died, his legal representatives pursued the Appeal and they having failed in that move, have filed the present 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. Plaintiff's case is that the suit land originally belonged to the Defendant-State. In the year, 1969, he occupied the said land and constructed a house over it and thereafter resided therein with his family. In the year, 1970 an encroachment proceeding, i.e., Encroachment Case No.1991 of 1970 had been initiated against the original Plaintiff and therein he having prayed for settlement of said land in his favour, the same stood refused. It is stated that inspite of the said order, the Plaintiff continued to possess the suit land. In the year, 1971 and 1991,

Encroachment Proceedings were again initiated vide Eviction Case Nos.41 of 1971 and 294 of 1971. The Plaintiff's prayer for settlement of the land being made therein, the same were again refused. However, it is stated that despite such orders, he continued to occupy the said land as before. It is said that he has been paying holding tax to the Notified Area Council, Rairangpur since 1970. In the current settlement record, the Plaintiff's possession has been noted in the remark column. The Plaintiff thus claimed to be in open, peaceful and continuous possession over the suit land since 1969. He, therefore, has filed the suit for declaration of his title and confirmation of possession over the suit land claiming to have so acquired by way of adverse possession. Further prayer has also been made for issuance of permanent injunction by restraining the Defendant not to interfere with his possession.

4. The Defendant in the written statement have denied the claim of the Plaintiff as regards acquisition of title over the suit land by adverse possession.

5. The trial Court on the above rival case having framed four (4) issues.; upon consideration of the evidence on record applying the position of law as to the acquisition of title by adverse possession has returned the findings against the Plaintiff.

The Plaintiff having thus been non-suited had filed the Appeal which has also been dismissed.

6. The Appeal has been admitted on the following substantial question of law:-

“1) Whether the findings rendered by the Courts below that the Plaintiff has failed to establish his case of acquisition of title over the suit land by way of adverse possession is contrary to the evidence on record as well as the settled position of law holding the field?”

7. Mr. S.K. Mishra, learned Counsel for the Appellant submitted that on the face of the overwhelming evidence of possession of the suit land by the Plaintiff since the year, 1969, the Courts below have erred in law by non-suited the Plaintiff in holding that no case of acquisition of title over the suit land by adverse possession has been made out. He submitted that when all along the Plaintiff's possession over the suit land has remained open, peaceful and continuous and it has been for upward of the period prescribed, the payment of penalty by the Plaintiff in the encroachment case ought not to have been held to have caused interruption/disruption of possession of the suit land when there is no evidence on record to show that the Plaintiff at any point of time had been physically dispossessed. He, therefore, contended that the

substantial question of law has to receive the answer in favour of the Plaintiff entitling him to the reliefs claimed in the suit.

8. Miss Samapika Mishra, learned Additional Standing Counsel submitted all in favour of the findings recorded by the Courts below. According to her, even accepting the evidence let in by the Plaintiff in entirety, the ingredients required for establishing the acquisition of title by adverse possession over the suit land have not been fulfilled and therefore the Courts below have rightly dismissed the suit.

9. In order to address the rival submissions in searching out the answer to the substantial question of law, the judgments passed by the Courts below being perused; it is seen that initially in the year, 1970, encroachment proceeding had been initiated against the Plaintiff and similar actions have been taken in the later years, i.e., 1971 and 1991. The plaintiff in those two first proceedings had prayed for settlement of the said land in his favour, which had been refused. In the last case of the year, 1991, the Plaintiff when faced the encroachment proceeding, it reveals from the evidence that he had paid the penalty in obedience to of the order of the Competent Authority. The suit has been filed in the year, 2002.

The settled position of law is that for establishment of a claim of acquisition of title over a piece of immovable property by way of

adverse possession, the possessor has to establish three classical requirements which are *nec vi, nec clam and nec precario*. The possession thus has to be open, peaceful and continuous for upward of the period prescribed and it has to be in denial of the title of the true owner exhibiting hostile animus all throughout to the knowledge of the true owner and accordingly the possession has to be as that of owner and exercising all the rights over the land in question as such.

Coming to the factual settings of the present case as stated above, the original plaintiff having prayed for settlement of the suit land in his favour in those two encroachment proceedings, the legal impact/significance stands that he has admitted the title of the true owner over the suit land and as such had prayed for settlement of the same. Even accepting his possession over the suit land since 1969, the possession thus cannot be said to be in denial of the title of the true owner and rather, his conduct in seeking the settlement of the land is an expression of clear the intent in that regard of acknowledgment of the title of the true owner.

Again, in the year, 1991, the Plaintiff having paid the penalty has accepted the position that he is an unauthorized occupant/encroacher at the mercy of the owner and not as its owner in exercising the right as such. The Plaintiff admitting, his position as such had paid the penalty

as imposed for such encroachment. With all these, in the absence of any pleading and evidence that by any later conduct, the Plaintiff disowned the title of the true owner and thereafter, continued to possess the suit land denying the title of the true owner and claiming the same unto himself to the knowledge of the true owner for upward of the prescribed period; the answer to the substantial question of law stands rendered against the claim/ case of the plaintiff.

For all the aforesaid discussion and reasons, the ultimate findings of the courts below that the Plaintiff has failed to establish his case of acquisition of title over the suit by way of adverse possession is not liable to be interfered with. Accordingly, it is said that the Plaintiff has rightly been non-suited being not entitled to the relief(s) claimed in the suit.

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

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

Narayan