

IN THE HIGH COURT OF ORISSA AT CUTTACK

R.S.A. NO.74 OF 2018

In the matter of an appeal under Section-100 of the Code of Civil Procedure has assailed the judgment and decree passed by the learned 1st Additional District Judge, Khurda, in Title Appeal Nos. 05/09 of 2004/2002 by confirming the judgment and decree passed by the learned Civil Judge (Junior Division), Khurda in Title Suit Nos.60/141 of 2001/1998.

Rama Rayasingh & Others

:::

Appellants

-versus-

Gouranga Gumansingh

:::

Respondent

(Appeared in this case by Video Conferencing Mode):

For Appellants - M/s. A. Pattnaik, J. Behera,
Advocates.

For Respondent - Mr. Satyanarayan Mohapatra,
Advocate.

CORAM:

MR. JUSTICE D.DASH

DATE OF HEARING:: 27.07.2022, DATE OF JUDGMENT::01.08.2022

These Appellants in filing this Appeal under Section-100 of the Code of Civil Procedure 1908 (for short, 'the Code') have assailed the judgments and decrees passed by the learned 1st Additional District Judge, Khurda, in Title Suit Nos.60/141 of 2001/1998.

By the same, the Appeal filed by these Appellants (Defendant Nos. 1 to 6) has been dismissed and thereby, the judgment and decree

passed by the learned Civil Judge (Junior Division), Khurda in Title Suit Nos.60/141 of 2001/1998 have been confirmed. The suit filed by the Respondent as the Plaintiff has been decreed by declaring the right, title and interest over the suit property and directing the Appellants (Defendants) to deliver vacant possession of the suit land to the Plaintiff with issuance of permanent injunction and payment of mesne profits @ of Rs.2/- per day from the date of filing of the suit till delivery of the possession.

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. Plaintiff's case is that he is having the right, title and interest over the suit property which appertains to Plot No.879 measuring an area of Act.0.04 decimals under Khata No.208 as per record of 1931 settlement which corresponds to Plot No.984 measuring an area of Ac.0.035 decimals under Khata No.230 of the record of 1964 settlement and that as per the record of 1998 settlement has come under Plot No.1130 appertaining to Khata No.79; the area remaining the same.

It is stated that Lokanath Paikaray, Rajendra Paikaray, Bira Paikaray, Arakhita Samantara, Mahadev Samantara, Madhab

Gumansingh, Jadu Gumansingh and Bansidhar Gumansingh were recorded owners of the suit land along with other lands as per the record of 1931 settlement. Rajendra Paikaray was the paternal grandfather of Defendant No.7, Gajendra Raysingh, common ancestors of Defendant Nos. 1 to 6, Narasingh Gumansingh, the common ancestor of the Plaintiff and Defendant Nos. 8 to 10. Udhaba Samantara, the paternal grandfather of Mahadev Samantara were four co-sharers in respect of the suit property along with other properties covered under Khata No.208 as per the record of right of 1964 settlement. It is stated that there was an amicable partition of the properties by the said recorded owners and the parties accordingly came to possess separate portions of land allotted in their respective shares. In the record of right published in the year, 1931, separate note of possession was there. However, as per the other record of right, the suit property was under the exclusive possession of Bira Samantara, Arakhita Samantara, Mahadev Samantara, who are the agnatic brothers being descendants from the common ancestors of Udhaba Samantara. Udhaba had three sons namely, Bira Samantara, Sudarsan Samantara and Dusan Samantara and Arakhita Samantara is the only son of Sudarsan Samantara died as a bachelor. So, Sudarsan's branch stood extinct. Nila who was only daughter of Bira was given in marriage by

the members of the joint family. As Bira died long prior to 1950, Nila had no share over the suit property. So, it is said that the Bira's branch was also extinct. Mahadev who is the only son of Dusasan, thus became the exclusive owner in possession of the suit property. During settlement of the year 1964, the suit property and other properties though were recorded jointly in the name of Lokanath Paikaray, Doli Raysingh, Bhima Raysingh, Nila Dei, Mahadev Samantara, Madhu Gumansingh and Gouranga Gumansingh, exclusive note of possession was there in the name of Mahadev Samantara in respect of the suit property corresponding to the land under Plot No.984.

The Plaintiff claims to have purchased the suit land from Mahadev Samantara, the recorded owner by registered sale dated 11.06.1990 for valuable consideration of Rs.2,000/-. Having purchased the property, the Plaintiff mutated the same in his name by an order passed in Mutation Case no.1006 of 1990. The suit land was recorded under Plot No.984 under Khata No.254/5. It is stated that the transfer of the suit property in favour of the Mahadev was with the knowledge and notice of the Defendants and one Krushna Chandra Paikaray, the son of Defendant No.7 had stood as the identifying witness in the said sale-deed dated 11.06.1990. Possession of the suit property by the Plaintiff is also said to be within the knowledge of the Defendants. In

the year 1998 during Hal settlement, the suit land has been recorded in the name of the Plaintiff, who is its owner. It is stated that the land under Plot No.985 adjoins the suit plot of on east which belongs to Defendant Nos. 1 to 6 and recorded jointly in the name of their vendors namely, Doli Raysingh and Bhima Raysingh. Land under Plot No.983 adjoins the suit plot on its west which belongs to Plaintiff and his nephew, the Defendant No.8 with note of possession in favour of grandfather of Defendant No.8 only. The Plaintiff serves at Bhubaneswar; therefore, taking advantage of his absence, the Defendant Nos. 1 & 2 threatened to put a shed over the suit land keep cattle thereunder in the courtyard. In view of that proceeding under section-144 of the Code of Criminal Procedure was initiated; wherein the Defendant Nos. 1 & 2 and their family members were restrained from entering upon the suit land. But then again on 30.06.1998, the Defendant Nos. 1 & 2 with the help of Defendant Nos. 3 to 6 are said to have constructed a thatched shed over the suit land compelling the Plaintiff to approach the police and the Defendant Nos. 1 & 2 were temporarily prevented from thatching the shed. In the meantime, Defendant Nos. 1 to 4 together initiated Objection Case No.1870 in the rent camp to record their name in respect of the suit land which was exclusively recorded in favour of the Plaintiff under Plot No.1130

in saying that they have purchased the suit by registered sale-deeds dated 11.03.1964 and 22.05.1967. It is stated that those two sale-deeds were never executed by Mahadev and the suit property being the subject matter of earlier suit with the OA No.27 of 1977, Mahadev was declared as the exclusive owner in possession of the suit property therein. The Defendant Nos. 1 & 2 being induced by Defendant N.8 forcibly trespassed upon the suit land and then constructed cow-shed. The Defendant Nos. 3 & 4 in collusion with Defendant Nos. 5 & 6 have also forcibly occupied thatched room on the western side of the suit land w.e.f. 30.09.1998. For all these, the Plaintiff had to file the suit for declaration and recovery of possession with mandatory injunction and mesne profits.

4. The Defendant Nos. 1 to 4 in their written statement have disputed the case of the Plaintiff to be having right, title, interest and possession over the suit at any time. It is stated that sale-deed dated 1.06.1990 executed by Mahadev in favour of the Plaintiff is not binding on them as there was no payment of consideration amount by the Plaintiff and there was no delivery of possession of the suit land to the Plaintiff. The Defendants claim to be in peaceful possession of the suit land since the date of their purchase and that they constructed the cow shed and kitchen over the suit land and are in peaceful possession

of the same since 13 years before the suit. Alternatively it is stated that if the title of the Defendants over the suit is not so held then and by virtue of their open, peaceful, continuous and long possession for upward of the period prescribed as the owner of the said land, they have to be said to have perfected title over it by way of adverse possession.

5. On the above rival pleadings, the Trial Court has framed six issues. Answering the crucial issue as to the Plaintiff's claim of right, title and interest over the suit i.e. issue no.4, the Trial Court upon consideration of evidence both oral and documentary and their analysis at its level has answered that issue in favour of the Plaintiff and against the Defendants. All other issues then have been answered in that light.

6. The Defendants challenged the same by carrying First Appeal. The First Appellate Court by its order dated 18.11.2004 had passed an order remanding the suit to the Trial Court for fresh decision of issue no.4 as also to consider the alternative case of the Defendants as to acquisition of title over the suit land by adverse possession and if so required by framing an issue and recording a specific finding thereon.

7. The Plaintiff being aggrieved by the said order had carried an Appeal under Order-43 Rule 1(u) of the Code which stood numbered as SAO No.12 of 2005. This Court vide judgment dated 12.08.2016

held that in view of the nature of evidence adduced by the parties, there was no scope for the First Appellate Court to hold that the findings and conclusion of the Trial Court are not based on materials on record. It has also been said that mere non-framing of specific issue being not sufficient to set aside judgment and decree and remand the suit, the First Appellate Court was required to consider whether the evidence on record already cover the issue specifically not frame and then making an endeavour as to if it can come to conclusion on that aspect was to be made. It was further said that only in that event, that the same cannot so done, the next course would have been to frame that issue and refer it for decision to the Trial Court with a direction to take further evidence and return the evidence together with the finding on that issue for the Appellate Court to proceed further in finally disposing the Appeal. At paragraph-15 of the said judgment followings have been said:-

“15. Examining the facts and circumstances of the case in light of above, it is seen that after arriving at the conclusion as mentioned in the aforesaid paras, the lower Appellate Court has abruptly jumped to set aside the judgment and decree impugned in Appeal and remit the suit to the Trial Court without going to say that it is not so possible to record a finding on issue no.4 without further

enquiry being made or further evidence being placed and brought on record.

In the instant case, when the Plaintiff has claimed title over the suit property on the basis of his purchase, the burden of proof rests on him to establish his title over the suit property. The Defendants in defence having projected a competing claim of title over the suit property, the lower Appellate Court was duty bound to first of all decide as to whether the title over the suit property as claimed by the Plaintiff is established or there has been a failure on his part. In doing so the claim of Defendants as regards perfection of title by adverse possession of title by adverse possession would have side by the side arisen for decision. On arriving at a finding that the Plaintiff has proved his title over the suit land and there has been a failure on the part of the Defendants to do so, the consequential consideration would have been as to whether the title of the Plaintiff has stood extinguished because of the establishment of the alternative case of the Defendants as regards acquisition of title by adverse possession. The very approach of the lower Appellate Court in disposing the Appeal thus appears to be indefensible. For the aforesaid discussion and reasons, the order of remand as passed is held unsustainable.”

Having said as above, the following order was passed :-

“The Appeal is now remitted to the Court of Additional District Judge, Khurda for its disposal afresh in accordance with law after hearing the parties. Before parting, it is however made clear that whatever have been discussed and observed hereinabove shall not be taken as expressions on the merit of the competing claims of the parties arising for decision in the Appeal and those are only for the purpose of demonstrating that no remand in this case was required.”

8. Pursuant to the above order, the First Appellate Court has now held that the Trial Court is right in declaring right, title and interest of the Plaintiff over the suit property. It has also been held that the title of the suit property had successfully passed on to the Plaintiff. Then at the end the alternative case projected by the Defendants as to acquisition of title over the suit by way of adverse possession has been answered in the negative.

9. The present Appeal has been admitted on the following substantial questions of law:-

“Whether the First Appellate Court, while deciding the First Appeal afresh following the observation made by this Court in SAO No.12 of 2005, has erred in holding that the title over the suit property is subsisting in favour of the Plaintiff by saying that the Defendants have failed

to prove their alternative case of acquisition of title over the suit land by adverse possession?”

10. Learned Counsel for the Appellants submitted that the lower Appellate Court while judging the sustainability of the finding of the Trial Court on issue no.4 has next gone to rule upon the alternative case projected by the Defendants as to their acquisition of the title over the suit by way of adverse possession, instead of framing an issue on that score. He submitted that even with regard to the title of Mahadev over the suit land, the First Appellate Court has simply been swayed away by the judgment and decree passed by the learned Civil Judge (Junior Division), Khurda in the earlier suit i.e. OAS No.27 of 1973(I) instead of further examining the evidence as to if Mahadev was in possession of the suit property said to have been allotted to him under that decree or not. He further submitted that with the overwhelming evidence or record with regard to the possession of the suit land by the Defendants on the strength of their sale-deeds Exts. A & B for all the period in an open and peaceful manner exercising all rights of ownership over the same by constructing cow-shed and kitchen room, the First Appellate Court's finding on that score against the Defendants is untenable.

11. Learned Counsel for the Respondent on the other hand submitted that the First Appellate Court with the earlier order passed by this Court in SAO No.12 of 2005 was under definite obligation to frame specific issue with regard to alternative claim of the Defendants over the suit property and it having been ordered that the First Appellate Court was to decide as to whether the title of the suit property as claimed by the Plaintiff is established or there has been failure on his part in doing so; the claim of Defendants as regards perfection of title by adverse possession has side by side been taken up for decision. He further submitted that this Court's order in the earlier Appeal is clear that on arriving at a finding that the Plaintiff has proved his title over the suit land and there has been failure on the part of the Defendants stood extinguished because of the establishment of the alternative case of the Defendants as regards acquisition of title by adverse possession. According to him, the First Appellate Court has scrupulously followed the ultimate directions preceded as also the observations made by this Court. He further submitted that now the First Appellate Court has found no justification or reason to take a view different from the one taken by the Trial Court.

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

13. From the side of the Plaintiff in support of the pleading that in OA No.27 of 1973, the suit property was allotted in favour of Mahadev Samantara, who happens to be his vendor, the certified copy of the judgment has been filed and proved as Ext.3. The decree with the compromise petition forming its part has been admitted in evidence and marked Ext.4. The Plaintiff has received the draft record of right and claims to be in possession of the same as exclusive owner thereof by purchasing the suit property from said Mahadev Samantara by registered sale-deed dated 11.06.1990. It has been stated by the Defendants that Mahadev was never in possession of the suit land and they are there in peaceful possession of the suit land. The OA No.27 of 1973 was decreed on compromise. It has been declared that the Plaintiff therein i.e. Mahadev Samantara is the title holder of the suit property. Present Defendant No.1 and 2 by filing the compromise petition, which forms the part of the decree in that OA No.27 of 1973 had admitted the title and possession of Mahadev over the suit property. Therefore, the Courts below are right in saying that the claim of possession of the suit land by the Defendant Nos. 1 & 2 since the year 1964 is not at all acceptable and the sale-deeds Ext.A & B are of no help to them in asserting their title over the suit property. Then accepting registered sale-deed dated 11.06.1990, Ext.10, the First

Appellate Court has rightly concluded that the title of the suit property had successfully passed from the hands of Mahadev, the title holder of the same to the hands of this Plaintiff.

14. The pleadings in the written statement are not there that after said compromise decree on which day, month and year, the Defendants again entered upon the suit land and began to possess the same and as of their own right as its owner and have been continuing to possess all along openly and peacefully. It has not been pleaded in the written statement as to when they denied the title of that Mahadev over the suit property which was resting on him, let's say for a moment that even on passing of the compromise decree. The Defendants in fact do not admit that Mahadev to be the exclusive title holder of the suit property and they say that the sale-deed in the hands of the Plaintiff said to have been executed by Mahadev is a nominal one. Their claim of possession is all along based on the two sale-deeds, Exts. A & B, which they claim to be the source/ reason for them to possess the suit land. In view of the compromise decree passed in OA No.27 of 1973, Exts.A & B have no value in the eye of law. In that view of the matter, the Defendants were under definite obligation to plead and prove that even leaving aside those sale-deeds in their favour, they had at a given point of time shunning/renouncing their status as the vendees under the sale-

deeds began to possess the suit land exercising right of ownership over the said property of their own by denying the title of the Mahadev Samantara and anybody who claims through him. In that view of the matter, the First Appellate Court having finally held that the Plaintiff is having the subsisting title over the suit land side by side deciding that the claim of the Defendants as to acquisition of title by way of adverse possession is not established and thereby the title of the true owner has been extinguished; by not framing a specific issue being not so required and answering that issue specifically no such mistake can be said to have been committed by the First Appellate Court which can be said to have materially affected the decision and the defends have thereby been substantially prejudiced. The substantial question of law is accordingly answered. The judgments and decrees passed by the Courts below are hereby confirmed.

15. In the result, the Appeal stands dismissed. However, there shall be no order as to cost.

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