

RSA NO.427 OF 2011

.....

-:: VERSUS ::-

**Advocate(s) who appeared in this case by Hybrid Arrangement
(Virtual/ Physical) Mode.**

CORAM:
MR. JUSTICE D. DASH

Date of Hearing : 07.04.2022 :: Date of Judgment ::18.04.2022

D.Dash,J. 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 passed by the learned Adhoc Additional District Judge(FTC), Dhenkanal in RFA No.36 of 2005 (37 of 2007).

By the same, the Appeal filed by the Respondent No.1 (Defendant No.1) under Section-96 of the Code has been allowed and the judgment and decree passed by the learned Additional Civil Judge (Sr. Division) in Civil Suit No.212 of 2002 have been set aside.

The declaration of right, title and interest of the Appellant (Plaintiff) over the Schedule-B lands and confirmation of possession as prayed for being refused, the prayer for recovery of possession perpetual prohibitory and mandatory injunction have also been disallowed.

The original Appellant (Plaintiff) having died during pendency of this original Appeal, his legal representatives have come on record and are pursuing this Appeal against the Respondent (Defendant)

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. Plaintiffs' case is that the land described in Schedule-A of the plaint under Sabik Khata No.461 under Plot No.2349 measuring Ac.1.93 decimals of mouza: Talabarkote was owned by one Madan and his son Baikuntha. It is stated that they had sold the land to the Plaintiff for valuable consideration by executing registered sale-deed on 10.04.1962. The Plaintiff's claim to have been in possession and enjoyment of the said purchased land since that day onwards.

In the year, 1970, some strangers namely, Brunda, Basu and Mahiya Naik when trespassed over the land and created disturbance over the possession of the Plaintiff; he had filed Title Suit No.25 of 1970 in the Court of Munsif Dhenkanal seeking the relief of declaration of his title and recovery of possession. The suit stood decreed on 31.08.1971 and the Defendants therein then had been directed to deliver possession of the suit of the Plaintiff. As directed, the Defendants therein, when failed to deliver the possession of the land to the Plaintiff within the time stipulated; the Plaintiff as the Decree Holder had levied the Execution Proceeding. It is stated that upon institution of the Execution Proceeding, those Defendants, Judgment Debtors therein left the possession.

It is the further case of the Plaintiff as he was serving outside, he could not take appropriate steps during the Hal Settlement Operation to get the suit land recorded in his name. In view of that in the Hal Settlement record published on 25.03.1986, the lands as described in Schedule –B of the plaint which corresponds to Schedule-A was recorded in the name of Baikuntha who happens to be one of the vendors of the Plaintiff. It is the case of the Plaintiff that despite such recording of the suit land in the name of Baikuntha, he continued to possess and enjoy the same.

The Defendant Nos. 2 to 4 are the sons of Baikuntha and the Defendant No.5 is the other heir of Madan, thus it is stated that the Defendant Nos. 2 to 5 are the heirs of the vendors of the Plaintiff. It is stated that in the Hal Record of Right standing in the name of Baikuntha in the remarks column, forcible possession of different persons in respect of those lands have been noted. The Plaintiff therefore, again filed Title Suit No.56 of 1991 in the Court of the Munsif, Dhenkanal with a prayer to delete their names. The suit was dismissed ex-parte. The matter being carried in Appeal vide Title Appeal No.17 /05 of 1993-94; it was allowed. The note of forcible possession made in remarks column of the ROR as of the Hal Settlement was ordered to be deleted and the Defendants in that suit were permanently enjoined from entering upon the land under Plot No.4890 described in Schedule-B of the plaint. The Plaintiff, however, continued to possess and enjoy the property. It is stated that he has installed a lift irrigation point over that plot of land as shown in Schedule-C and has constructed house up to certain level below the roof. It is next alleged that the Defendant No.1 forcibly trespassed upon that Schedule-C land and started making construction. He claimed then to have purchased the same from Defendant Nos. 2 to 4, the sons of Baikuntha under registered sale-deed dated 04.01.1988. It is asserted that neither Baikuntha nor his sons had any manner of right,

title and interest or possession over the suit schedule land despite such recording of the same in the name of Baikuntha in the Hal ROR. The Plaintiff having filed an application under Section-23(A) of the Orissa Land Reforms Act, numbered as Case No.74 of 1997 to declare the sale-deed dated 04.01.1988 void as without permission from the Competent Authority and praying therein to restore the possession of the said land, however could not prosecute the same for which it has been dismissed on 26.08.2002. The Plaintiff's son then initiated a proceeding under section-145 of the Cr.P.C. in so far as Schedule- C lands are concerned, which was decided against the Plaintiff as he was absent and in that proceeding, the possession of Defendant No.1 has been declared. The Plaintiff therefore filed the suit seeking the following reliefs:-

- (i) to declare his right, title & interest over the B and C Schedule lands and confirmation of his possession thereon;
- (ii) to declare the registered sale deed dtd. 4.1.1988 as void;
- (iii) mandatory injunction for removal of structures erected by Defendant no.1 over the C-Schedule lands; and
- (iv) to permanently injunct Defendant Nos.2 to 5 from interfering in the possession and enjoyment of the plaintiff over the Schedule-B lands and to injunct

Defendant no.1 from interfering in his possession over the Schedule B & C lands.

5. The Defendant No.1 contested the suit by filing the written statement. It is stated that the Plaintiff never purchased the suit land under the registered sale-deed from Madan and Baikuntha in the year 1962 and as such, he was never in possession or enjoyment of the same. It is also stated that the sale-deed is not genuine and had never been acted upon. It is stated that the heirs of the owners of the Schedule-A land possessed and enjoyed the property after the death of their predecessors which was in their enjoyment and possession. It is further stated that the Defendant No.2 while in possession of the Schedule-C land has sold the same to the Defendant No.1 by registered sale-deed dated 04.01.1988. As per his case, the result in Title Suit No.25 of 1970 and Title Suit No.56 of 1991 have no impact in the present suit in so far his claim over Schedule-C land is concerned. It is stated that pursuant to the purchase of Schedule-C land, he has mutated the same in his favour and has been in possession as its lawful owner.

6. The Trial Court on the above rival pleadings has framed seven issues. Upon examination of evidence and their evaluation, the Trial Court has answered those in saying that the Plaintiff has been in continuous and exclusive possession of the suit property. It has been further held that the successors of the Defendants had delivered the

possession of the suit land to the Plaintiff pursuant to the decree passed in Title Suit No.25 of 1970.

Having said as above, the Defendant No.1 has been held to be having no right, title and interest over the Schedule-B land which includes Schedule-C land as when he purchased the same, his vendors had no such right, title and interest over the property to so alienate. In that view of the matter, the Trial Court has taken a view that the Plaintiff has title over the suit land and the claim of the Defendant No.1 has no leg in the eye of law to stand.

6. The Defendant No.1 being aggrieved by the judgment and decree passed by the Trial Court in decreeing the suit filed by the Plaintiff having filed the Appeal has been successful in non-suiting the Plaintiff.

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

- (A) Whether the lower Appellate Court has erred in law by not relying on the judgment and decree passed by the Civil Court in T.S. No.56 of 1991 and Title Appeal No.17 of 1993 which has reached finality?
- (B) Whether the lower Appellate Court has committed error by entering into the plea of adverse possession although the same plea has not been adopted by any of the parties to the suit?

9. Learned Counsel for the Appellant (Plaintiff) submitted that the First Appellate Court has committed grave error in not placing reliance on the judgments and decrees passed in Title Suit No.25 of 1970 in ignoring its impact by giving unnecessary emphasis upon the Execution Proceeding's result, when it is categorically stated that those Judgment Debtors having left the possession, the Execution Proceeding was no more pursued. He further submitted that the First Appellate Court has erroneously overlooked the judgment and decree passed in Title Appeal No.17 of 1993, which are still holding the field. He submitted that the Plaintiff being the rightful owner on the strength of his purchase under a registered sale-deed from the erstwhile owners on payment of valuable consideration and having proved that he has been in possession of the suit land all through except facing some problem from the side of the trespassers who have been directed to be driven out of possession by the Civil Court, there arises no reason or justification nor any legal impediment in decreeing the suit. He further submitted that the finding of the First Appellate Court that the Plaintiff has lost his title over the land is wholly untenable and is an outcome of perverse appreciation of the matter both on fact and law.

10. None appeared on behalf of the Respondents despite service of notice.

11. Keeping in view the submission made, I have carefully read the judgments passed by the Court's below, I have also gone through the plaints and written statements as well as the depositions of the witnesses and the documents admitted in evidence and marked exhibits.

12. As per the case of the Plaintiff, he had filed Title Suit No.25 of 1970 against some persons when they had trespassed over the land in Schedule-A measuring Ac.1.93 decimals. It is stated that in the said suit, the judgment was passed directing those Defendants to deliver possession of the said suit land to the Plaintiff. Admittedly, the Plaintiff being the decree holder had levied an Execution Case. It is stated that the Execution Case was not further pursued as those Defendants Judgment Debtors left the possession of the suit land. The Plaintiff has however not proved any document in support of result of the said execution proceeding nor the factum as to delivery of possession of the suit land by driving out of those Judgment Debtors have been shown. The Plaintiff having proved the certified copy of the judgment and decree passed in Title Suit No.25 of 1970 (Ext.4) has not further placed any other documents.

It is again the case of the Plaintiff that since in the Hal Record of Right names of several persons found mentioned in the remark column indicating their possession over different portion of land by force, he had

filed Title Suit No.56 of 1991 and that ultimately, was allowed in Title Appeal No.17 /05 of 1993-94; wherein those notes were ordered to be deleted and the Defendants therein were permanently enjoined from entering upon the land under Plot No.4890 described in Schedule-B of the plaint. This judgment in the Appeal has been admitted in evidence and marked Ext.5. The Plaintiff in order to rely upon his claim of being in possession is now banking upon the observation made in Ext.5 which is the judgment passed in the Appeal in the second round of litigation initiated by the Plaintiff against those persons arraigning them as the Defendants for deletion of the note of forcible possession in respect of Schedule-B land in their favour. It is stated that in the said judgment, the Court has taken note of the factum of abandonment of the possession by those Judgment Debtors of the suit of the year 1970, the first round of litigation concerning the suit land.

13. The position thus remains that when the land in the instant suit was under the possession of the trespassers for whose removal, Title Suit No. 25 of 1970 had been filed; the Plaintiff has not satisfactorily proved the fact that pursuant to the decree passed, he has taken the possession of the suit land from them. Absolutely, no such evidence has come on record. Thus under the circumstances, mere existence of a decree in favour of the Plaintiff cannot give rise to a presumption of he being in

possession of the land involved in the suit. When it is said that Execution Proceeding had been levied for execution of the decree passed in Title Suit No.25 of 1970, the required documents in that regard having not been filed; it is not shown that the said execution proceeding was disposed of or dropped with full satisfaction or that it was so withdrawn by that Plaintiff stating to have no more the need to pursue the same as the judgment debtors therein or their successors have left the possession of the suit land or for any such other happenings or development. A party having obtained a decree of possession which is executable cannot go to reap the benefit of the same and derive the advantages therefrom without putting it into execution as per law within the period of limitation. This being the position and when that decree is no more executable, in view of the lapse of period of limitation of twelve (12) years from the passing of the same, the case of the Plaintiff that he has come into possession of the suit land pursuant to the said decree passed in Title Suit No.25 of 1970 squarely fails. The oral evidence on the above score being also completely absent, it is not possible at this stage to say that the Plaintiff based on his title under Ext.1, the registered sale-deed has been in possession of the suit land. In that view of the matter, the judgment and decree passed in Title Appeal No.17 of 1993 lands the plaintiff nowhere.

14. For the aforesaid, this Court is of the considered view that the Plaintiff's suit against the present Defendant No.1 seeking the relief as noted in the foregoing paragraph-3 is liable to be dismissed. The answers to the substantial questions of law thus stand returned in favour of the confirmation of judgment and decree passed by the First Appellate Court.

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

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

Narayan

