

IN THE HIGH COURT OF ORISSA AT CUTTACK

RSA No.191 of 2013

In the matter of an appeal under section 100 of the Code of Civil Procedure assailing the judgment and decree passed by the learned District Judge, Baleswar in R.F.A. No.185 of 2011 confirming the judgment and decree dated 29.07.2011 and 04.08.2011 respectively passed by the learned Additional Civil Judge, Senior Division, Balasore in Civil Suit No.324 of 2002-I.

Smt. Kadambini Dey & Another* *Appellants

-versus-

State of Odisha & Another* *Respondents

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

***For Appellants* - M/s.A.P. Bose, R.K. Mahanta,
N. Hota, V. Kar, D. Sahoo
S.S. Routray**

***For Respondents* - Mr.G.N. Rout,
(ASC for R.1)**

M/s.S.K. Mishra, J. Pradhan,
S.K. Rout, D.K. Pradhan,
S.D. Prasad Mohapatrartra
(For R.2)

CORAM:
MR. JUSTICE D.DASH

Date of Hearing : 14.03.2022 : Date of Judgment:16.03.2022

The Appellants, by filing this Appeal under Section 100 of the Code of Civil Procedure (for short, 'the Code') judgment and decree passed by the learned District Judge, Baleswar in R.F.A. No.185 of 2011.

By the said judgment and decree, the Appeal filed by the present Appellants (Defendants) under section 96 of the Code has been dismissed and thereby, the judgment and decree dated 29.07.2011 and 04.08.2011 respectively passed by the learned Additional Civil Judge, Senior Division, Balasore in Civil Suit No.324 of 2002-I declaring the right, title and interest and granting the relief of recovery of possession of the Respondent No.2 (Plaintiff) over the suit land, have been confirmed.

The Respondent No.1, as the Plaintiff, having filed the suit, thus has been successful in both the forums below.

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 Mahi Dey @ Jhatu @ Mahendra, S/o-Bholu Dey was the original owner of the land which is the subject matter of the suit. In Execution Case No.5239 of 1935-36, the property in question was put to auction in Case No.11420 of 1935-36. Jadunath Pradhan purchased the suit land along with other landed properties in the said auction held by the Court. Accordingly, he took the possession of the suit land and remained in peaceful possession thereof. He had four sons, namely, Upendra, Surendera, Gajendra and Charuchandra. In their family partition, the suit land was allotted to the three sons other than Upendra. In course of time, while in possession of the property, they sold the same to the Plaintiff by registered sale deed dated 29.03.1989. Prior to that, they had an agreement for sale of the said land with the Plaintiff and pursuant to the same, the possession of the suit

land had been delivered by those three persons, sons of Jadunath to the Plaintiff.

The Defendants having no right, title and interest over the suit land when created disturbances in the peaceful possession of the suit land by the Plaintiff and forcibly constructed a thatched house over the same, the suit has come to be filed.

4. The Defendant Nos.1 to 6, in their written statement, have averred that the suit land belonged to Saradamani Dei @ Muli Dei. Mahi Dey is her son and he had no issue. So, he was dependent on one Kusha Dey, who happens to be his cousin brother. It is stated that since the time Mahi Dey, Kusha Dey who is the predecessor-in-interest of the Defendants as well as these Defendants have been residing in the said house situated on the suit land and said state of affair has been continuing after the death of Mahi Dey. It is their case that the suit land was never put to auction. Jadunath was a money lender and taking advantage of the simplicity of the Mahi, he had managed to get the land auctioned by practicing fraud. It is their case that Mahi Dey had no title over the suit land during the life time of Saradamani. So, the above sale of the suit land belonging to Saradamani in public auction for the dues of Mahi @ Jhatu Dey is attacked as illegal. Their case is that Jadunath, by virtue of said court auction, had not been conferred with any title in respect of the suit land. So, the subsequent transfer by the sons of Jadunath is also said to be void.

Along with the written statement, they have advanced a counter claim seeking a decree against the Plaintiff to permanently restrain him from creating any disturbances in their possession in so far as the suit land is concerned as also to declare that the note of forcible possession

standing in the name of the Plaintiff in the Major Settlement Record of Right as void.

5. Faced with above rival pleadings, the Trial Court has framed as many as nine (9) issues. Answering the crucial issues as to the Plaintiff's right, title, interest and possession, upon examination of the evidence and their evaluation, the answer has been recorded in favour of the Plaintiff. Other issues have accordingly been answered in holding the Plaintiffs entitlement to the decree as prayed for.

The Defendants having suffered from the judgment and decree passed by the Trial Court, although had carried an Appeal under Section 96 of the Code, they have been unsuccessful.

6. Mr.A.P. Bose, learned counsel for the Appellants submitted that when the challenge in the suit is to the right, title and interest of the Plaintiffs; in the absence of any acceptable evidence that the property in question had been put to auction by the court in an Execution Proceeding and that the possession, pursuant to the same, had been delivered to Jadunath as the successful auction purchaser; the finding on the issue of right, title and interest of the Plaintiff, who is a subsequent purchaser from the heirs of Jadunath ought not to have been recorded.

7. Mr.S.K.Mishra, learned counsel for the Respondent No.2 submitted all in favour of the findings recorded by the Courts below. According to him, the Plaintiff has proved voluminous documents including the certified copy of the order sheet of that Execution Proceeding (Ext.3), certified copy of the sale (Ext.4) and the certified copy of the proclamation (Ext.5), which clearly show that the property in question having been put to auction, Jadunath stood as the successful auction purchaser and he had been ultimately delivered with the

possession of the suit land. He thus submitted that the answer on the issue of right, title and interest has been rightly recorded in favour of the Plaintiff, who is a purchaser from the sons of Jadunath by a registered sale deed (Ext.8) for valuable consideration.

8. The present Appeal has been admitted on the following substantial question of law-

““Whether the Courts below, in the absence of acceptable evidence that the property in question being put to auction by the Court in an execution proceeding, had been delivered to the auction purchaser, are right in holding that the Plaintiff has the subsisting title over the same by virtue of his purchase, as claimed?”?”

9. As it reveals from Ext.2, the property in question as per the C.S. record stood recorded in the name of Saradamani Dei, W/o-Bholu Dey. The sale certificate (Ext.4) reveals that it had been issued in favour of Jadunath in respect of the suit land. Certified copy of the proclamation (Ext.5) and the bid sheet (Ext.3/A) show that the land in question had been put to auction in that execution case. The sale has been confirmed by order as is seen from Ext.3. In that rent suit and execution proceeding, Jhatu Dey @ Mahendra and his mother Saradamani Dey were very much the parties. With such evidence on record being viewed with the record of right of the current settlement, when the Defendants have not been able to specifically plead and prove their possession on the basis of their right over the suit land, the Courts below are not found to have committed any mistake in recording the concurrent finding on title of the suit property to be resting in favour of the Plaintiff, a subsequent purchaser by a registered sale deed for valuable consideration from the heirs of said auction purchaser.

10. The aforesaid discussion and reasons thus provide the answer to the substantial question of law against the Defendants. The judgments and decrees passed by the Courts below, are thus hereby confirmed.

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

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



Basu