

IN THE HIGH COURT OF ORISSA AT CUTTACK

RSA No.33 of 2014

In the matter of an appeal under section 100 of the Code of Civil Procedure assailing the judgment and decree dated 22.10.2013 and 06.11.2013 respectively passed by the learned Civil Judge (Senior Division), Banki in R.F.A. No.03 of 2003 confirming the judgment and decree dated 14.03.2003 and 27.03.2003 respectively passed by the learned Civil Judge (Junior Division), Banki in T.S. Case No.24 of 1993.

Smt. Rajalaxmi Mohapatra ***Appellant***

-versus-

Saraswati Patra & Others ***Respondents***

Appeared in this case by Video Conferencing Mode

For Appellant - M/s.J.K. Chhotaray, P.K. Sahoo and
B.K. Mohapatra
Advocates

For Respondents - M/s.D.P. Dhal, K.M. Dhal, M.Das,
M.K.Sahoo, S.J. Biswal,
A.K. Satpathy & C.Ku. Dey
Advocates for R.1.

CORAM:
MR. JUSTICE D.DASH

Date of Hearing & Judgment: 10.01.2022

D. Dash, J. The Appellant, by filing this Appeal under Section 100 Civil Procedure Code (for short, 'the Code'), has assailed the judgment and decree dated 22.10.2013 and 06.11.2013 respectively passed by the learned Civil Judge (Senior Division), Banki in R.F.A. No.03 of 2003.

By the said judgment and decree, while dismissing the Appeal filed by the present Appellant-Plaintiff No.2 under Section 96 of the Code, the First Appellate Court has confirmed the judgment and decree

dated 14.03.2003 and 27.03.2003 respectively passed by the learned Civil Judge (Junior Division), Banki in T.S. Case No.24 of 1993.

The suit filed by the Appellant and her brother as the Plaintiffs has been dismissed.

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 Plaintiffs' case is that one Jambu Mohapatra had two sons, namely, Narottama Mohapatra and Birabara Mohapatra. Narottama died issueless and on his death, his widow Dhobi remarried Biarabara and through Birabara, Dhobi has begotten three sons, namely, Gurubari, Purusottam and Satrughna. The Plaintiffs are the son and daughter of Gurubari, who is dead.

It is stated that the suit land measuring Ac.0.12 decimals is the homestead land and it stood recorded in the name of Birabara and Dhobi. It is specifically stated that the land measuring Ac.0.04 decimals under plot no.694 to the south of the suit land had fallen to the share of their father and he was possessing the same till his death. After that, the Plaintiffs have been in possession of the same. It is said that Dhobi and Defendant No.2 had sold a portion of the land to the Defendant No.1 and the share of land allotted to Gurubari and Satrughna is possessed by Plaintiff No.1. The Plaintiff No.1 was serving outside Banki. When he came to construct his residential house over the suit land, the Defendant No.1 was found to be in occupation of the same. On being asked, the Defendant No.1 disclosed to have purchased the entire land from Dhobi and Defendant No.2. Then, it was found that the entire land has been mutated in the name of Defendant No.1 by order dated 29.10.1976

passed in Mutation Case No.270 of 1970-71. It is alleged that on 12.08.1993, when Defendant No.1 created disturbance in the possession of the suit land and threatened with dire consequences, the Plaintiffs having the right, title, interest and possession over the suit land, filed the suit for permanent injunction to restrain the Defendant No.1 from interfering with their possession of the suit land.

The Defendant No.1, contested the suit by filing written statement. It is stated that the recorded tenant Dhobi Bewa had married Narottam and after the death of Narottam, she married to his brother Birabara, who died leaving behind his widow Dhobi and three sons, namely, Gurubari, Purusottam (Defendant No.2) and Satrughna. There was no partition of the properties of Birabara, amongst his sons. After the death of Birabara and Gurubari, the Defendant No.2 being the eldest member of the family, was maintaining the Plaintiffs and other members of the family of late Birabara. He was looking after the family affairs and properties including the suit property. Dhobi and Defendant No.2 had borrowed a sum of Rs.2000/- from the mother of Defendant No.1 for maintenance of their family and meet the education expenses of the Plaintiffs and other family members. So, they executed a mortgage deed in favour of the mother of Defendant No.1. Again in the year 1970, in order to repay the loan and maintain the family, sold the suit land and other land under plot no.694 measuring Ac.0.12 decimals to her mother for valuable consideration of Rs.4000/- by executing registered sale deed on 05.09.1970. The Defendant No.2 being the representative of Plaintiffs and Satrughna who were then minors sold the suit land to the mother of Defendant No.1 and delivered possession. Since the year 1970, the mother of Defendant No.1 has been possessing the purchased land by constructing her residential house on a portion as

also latrine on another portion by fencing the same all around. It is stated that there was no partition of the suit land nor any other land between Gurubari, Purusottam (Defendant No.2) and Satrughna at the time of sale. The suit land had been mutated in the name of her mother in Mutation Case No.270 of 1970-71. The Plaintiffs, Defendant No.2 and other family members are well aware of this position. After the death of mother of Defendant No.1, he being the only legal heir, has been possessing the suit land and other land under Ext.1 and she is the exclusive right, title and interest holder.

4. On the above rival pleadings, the Trial Court framed four issues. Answering the crucial issues, i.e. issue no.3 as to whether the Plaintiffs have any right, title and interest over the suit land; upon examination of the evidence on record and their evaluation, the finding has been recorded against the Plaintiffs and this has led to the dismissal of the suit for the reliefs claimed.

The Plaintiff No.2 being aggrieved by the judgment and decree non-suiting her and her brother Kasinath, having carried the Appeal, has failed in that attempt.

5. Learned counsel for the Appellant (Plaintiff No.2) submits that the sale effected under Ext.A, i.e, the sale deed dated 05.09.1970 by the Plaintiff No.1 being represented by his uncle guardian ought to have been held to be void being hit under the provisions of Section 11 of Hindu Minority and Guardianship Act. He, therefore, urges for admission of this Appeal on the above substantial question of law.

Learned counsel for the Respondent No.1 (Defendant No.2), entering appearance in the Appeal, submits all in favour of the findings recorded by the Courts below. According to him, issue no.3 has been

rightly answered against the Plaintiffs holding them to have not proved their right, title and interest over the suit land.

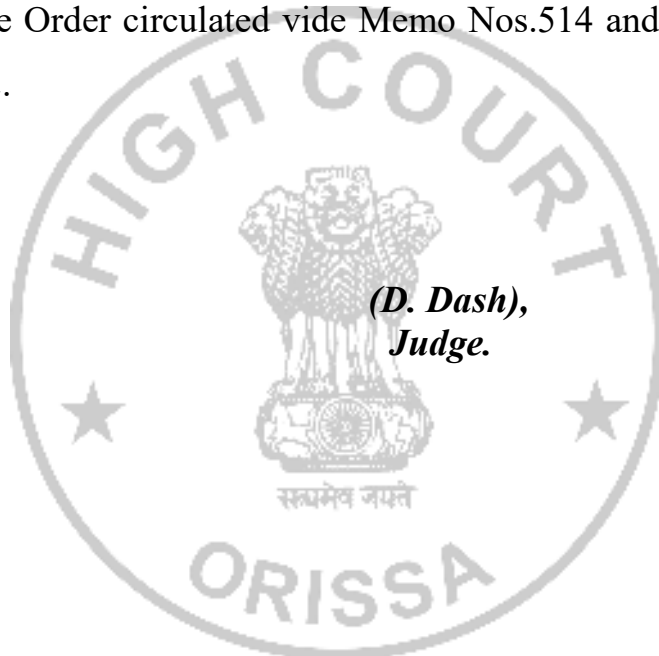
6. Keeping in view the submissions made, the judgments passed by the Courts below have been carefully gone through.

7. The suit is one for permanent injunction simpliciter. Admittedly, the suit land with other lands cover plot no.694 appertaining to khata no.382 has been sold to the mother of Defendant No.1 in the year 1970 by registered sale deed (Ext.A) and accordingly mutated record of right has been prepared vide Ext.B. The Courts below, on detail analysis of evidence on record, have arrived at a conclusion that the Plaintiffs have failed to establish their possession over the suit land by acceptable evidence which have been found to be contradictory to their own pleadings. In the plaint, when it is said that the suit land is a vacant space, in evidence it has been said that a latrine is standing over the suit land, which had been constructed by Plaintiff No.2. The Courts below are found to have concluded that Respondent No.1 is in possession of the suit land by constructing her residential house and using the adjoining vacant space as court yard by constructing a latrine over there. In that view of the matter, the Courts below having said that the Defendant No.1 has acquired right, title and interest over the suit land is in possession of the same since the year 1970, this Court finds that the said finding suffers from the vice of perversity.

For all these aforesaid, this Court is of the considered view that their surfaces no such substantial question of law for being answered in this Appeal meriting its admission.

8. In the result, the Appeal stands dismissed. The Judgments and decrees passed by the Courts below stand confirmed. There shall, however, be no order as to cost.

As the restrictions due to resurgence of COVID-19 situation are continuing, learned counsel for the parties may utilize a printout of the order available in the High Court's website, at par with certified copy, subject to attestation by the concerned advocate, in the manner prescribed vide Court's Notice No.4587 dated 25th March, 2020 as modified by Court's Notice No.4798 dated 15th April, 2021, and Court's Office Order circulated vide Memo Nos.514 and 515 dated 7th January, 2022.



Basu